

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

77.

1413

**United States Court of Appeals
For the Second Circuit**

UNITED STATES OF AMERICA,

Appellee,

-against-

LOUIS SANTOS,

Defendant-Appellant.

PPS

*On Appeal from the United States District Court
for the Southern District of New York*

APPELLANT'S APPENDIX

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FILE NO	0208 1	0835	DOCKET ENTRIES	Case Filed Mo Day	02 18	77	0135	02
FILE NO	0208 1	0835	DOCKET ENTRIES	No of Dets	* 06			
FILE NO	0208 1	0835	DOCKET ENTRIES	U.S. MAG. CASE NO. 77-167				

U.S. DISTRICT COURT	OFFENSES CHARGED	ORIGINAL COUNTS
18:241	Violation of civil rights, causing death	1
18:1510	Obstruction of Govt. investigation	2

U.S. DISTRICT COURT	U.S. MAG. CASE NO.
77-167	77-167

II KEY DATES & INTERVALS	ADJUDICATION	APPEAL	TOTAL
*2/10/77	2-18-77	2-24-77	5-20-77

Search Warrant	Issued	DATE	INITIAL NO	INITIAL APPEARANCE DATE	INITIAL NO	OUTCOME
Summons	Served	2/10/77	KS-08AK	2/10/77	KS-08AK	HELD FOR COURT OTHER PROCEEDING IN THIS DISTRICT
Arrest Warrant	Issued	2/10/77	KS-08AK	2/18/77	KS-08AK	HELD FOR COURT OTHER PROCEEDING IN THIS DISTRICT
COMPLAINT	FILED	2/10/77	KS-08AK	2/18/77	KS-08AK	HELD FOR COURT OTHER PROCEEDING IN THIS DISTRICT

U.S. Attorney or Asst. Michael Q. Carey 791-1136

H. Borg 123-60 83rd Ave. Lawrence Hochheiser 123-60 83rd Ave. Court St., Brooklyn, N.Y. 11241 BO 1-1200 875-4268

RECORDING	Scudiero-01, Pecorino-03, Salvato-04, Felice-05, Cabrera-06
DATE	PROCEEDINGS
2/10/77	Complaint filed, represented by Stephen Hochheiser, 16 Court St. Bklyn, N.Y. Defendant remanded into the custody of U.S. Marshal in lieu of \$250,000 cash/surety.
2/18/77	Indictment filed, 77 Cr. 135.....Tenney, J.
2-24-77	Deft. (atty. Harold Borg present) pleads not guilty. Deft. continued remanded in lieu of bail fixed at \$250,000. Case assigned to Metzner, J. for all purposes.....Frankel, J.
2-25-77	Fld the following papers rec'd from Mag St Clair (Mag #77-167) Complaint-Warrant of arrest Ex 2-10-77-Notice of appearance of atty Lawrence Hochheiser as atty for deft
3-1-77	Pre-trial conference held....Metzner, J.
3-2-77	Fld notice of appearance of Harold Borg as atty for deft.
3-9-77	Fld deft's affirmation & notice of motion for an order pursuant to Rules 8 & 14 F.R.C.P. & 5th Amendment to the U.S. Constitution for a severance of trial & parties

-OVER- 1A

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page 2		IV. PROCEEDINGS (continued)	PAGE TWO	V. EXCLUDABLE DELAY			
DATE				DEFENSE	GOVT	OTHER	REMARKS
3-9-77	Filed affid & notice of motion for an order directing the U.S. Atty. to serve & file a B/P						
3-14-77	Filed Govt's memorandum of law in opposition to deft's pre-trial motions						
3-14-77	Filed AUSA affid in opposition to deft's motion for a B/P Discovery & inspection for separate trials						
3-14-77	Filed Affid for W/H/C Ad Test ret 3-13-77						
3-17-77	Filed OPINION # 45696 application fld 3-1-77 for reduction of bail is denied...Metzner, J. M/N						
3-18-77	Filed memo end on motion fld 3-9-77- Motion denied... Metzner, J. M/N						
3-18-77	Filed memo end on motion fld 3-18-77- Part denied & part granted as indicated... Metzner, J. M/N						
3-23-77	Filed Govt's B/P						
3-23-77	Filed affid of AUSA in opposition to deft's motions for a B/P						
3-22-77	Filed W/H/C ad rTest Ex 3-21-77						
3-24-77	Filed sealed enveloped & placed in cashiers vault..Metzner, J.						
3-31-77	Filed Govt's affid & notice of motion for an order directing the deft to furnish to the Govt a sample of the deft's hair						
3-31-77	Filed affid of AUSA in opposition to deft motions for the names & addresses of potential govt witnesses						
4-4-77	Filed memo end on motion filed 3-31-77. The govt moves for an order directing deft to furnish to the Govt samples of his hair. Order Signed, Metzner, J. M/N						
4-4-77	Filed order that the defg shall furnish to the Govt samples of his hair..Metzner, J. M/N						
4-13-77	Filed W/H/C Ad Test writ issued ret 4-13-77						
4-19-77	Filed Writ of H/C Ad Test. issued 4-19-77 ret 4-27-77						
4-18-77	Filed OPINION #45804 Rquest made by Govt is justified Trial will be adj for one week to May 2, 1977 So ordered Metzner, J. M/N						
4-21-77	Filed Govt's supplemental B/P						
4-29-77	Case called as to deft Govt moves to adj this trial for one week. Motion granted (see minutes of proceedings as to reasons why- Trial adj to May 9, 1977....METZNER, J.						
5-10-77	Filed Govt's requested voir dire of prospective jurors (continued pg 3)						

FINE AND RESTITUTION PAYMENTS

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELA		
		(a)	(b)	(c)
5-11-77	(Document No.) Filed sealed envelope (placed in cashiers vault) (2)			
5-11-77	Filed envelope ordered sealed & impounded...METZNER,J. (placed in cashiers vault) Court Exhibit # 3)			
5-13-77	Filed W/H/C ad test writ issued 5-12-77			
5-13-77	Filed W/H/C ad test writ issued 5-16-77			
5-16-77	Filed envelope ordered sealed....METZNER,J. (placed in cashiers Vault) (3)			
5-9-77	Jury impanelled & sworn, Trial begunMETZNER,J.			
5-10-77	Trial continued METZNER,J.			
5-11-77	" " METZNER,J.			
5-12-77	" " METZNER,J.			
5-13-77	" " METZNER,J.			
5-18-77	Filed envelope ordered sealed (Court exhibit # 1)METZNER,J. (placed in cashiers vault)			
5-19-77	Filed Govt's requests to charge			
5-19-77	Filed envelope- letter dated 4-15-77 from AUSA Carey to be sealed bty the Court...So ordered....METZNER,J, (placed in cashiers vault)			
5-19-77	Filed envelope- Affid of AUSA Carey dated 4-30-77 Ordered sealed....METZNER,J. (placed in cashiers vault)			
5-20-77	Filed Govt's supplemental requests to charge			
5-16-77	Trial continued			
5-17-77	" "			
5-18-77	" "			
5-19-77	" "			
5-20-77	" " Jurors continue deliberations, @ 8:55 A.M. Jury Verdict Deft GUILTY on Count(1) ONE , & as to the question did/ result from actions taken pursuant to the conspiracy & the answer was no & NOT GUILTY as to count TWO (2). Bail contin ued. Motion reserved....METZNER,J.			
6-5-77	Filed Transcript of record of proceedings, dated MAY 2, 9, 10, 11, 12 1977			
6-5-77	Filed Transcript of record of proceedings, dated MAY 13, 14, 17 18, 19 & 20, 1977			
7-11-77	Filed JUDG MENT & COMMITMENT DEft with his atty present. The deft is hereby committed to the custody of the Atty General or his authorized representative for imprisonment for a period of SIX (6) YEARS on count 1.....METZNER,J. copies issued (ent 7-12-77)			

PROCEEDINGS (continued)

V. EXCLUDABLE DELAY

(a) (b) (c) (d)

(Document No.)

Filed notice of appeal from the judgment entered on the 11th day of J ly 1977 (Mailed notice to deft's atty & U.S. Atty)

1 TRANSCRIPT OF TESTIMONY

2 UNITED STATES OF AMERICA

3 vs.

77 Cr. 135

4 SALVATORE SCUDERIERO, et al

5
6 Before: HON. CHARLES M. METZNER, District Judge.
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16 STENOGRAPHER'S MINUTES

17 EXCERPTS
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5A

Salvato-direct

mmhhl

(Jury in box.)

MR. CAREY: Your Honor, the government calls
Joseph Anthony Salvato.

THE COURT: He is on the stand.

J O S E P H A . S A L V A T O, a witness called on
behalf of the government, being first duly sworn,
testified as follows:

DIRECT EXAMINATION

BY MR. CAREY:

Q Mr. Salvato, are you known by any other name?

A Junior.

Q How old are you, Mr. Salvato?

A 31.

Q Where were you born?

A Manhattan.

Q Can you speak up loud enough so the people in
the back of the jury box can hear you?

A Manhattan, New York.

Q How much formal education have you had?

A 11th grade.

Q Do you know a person named Louis Santos?

A Yes.

Q Can you speak up loudly?

6A

1 mmhh 2 Salvato-direct

2 A Yes.

3 Q Do you see him in the courtroom?

4 A Yes.

5 Q Would you please indicate to the jury where
6 you see him?

7 A He is sitting over there reading a paper.

8 Q Would you please describe what he is wearing?

9 MR. BORG: He is indicating Louis Santos.

10 Q Do you know a person named Joseph Pecorino?

11 A Yes.

12 Q Do you see him in the courtroom?

13 A Yes.

14 Q Would you please indicate where you see him?

15 A He is sitting by the lawyer with a light blue
16 shirt on.

17 MR. STALONAS: Indicating Joseph Pecorino.

18 Q Do you know a person named Philip Felice?

19 A Yes.

20 Q Do you see that person in the courtroom?

21 A Yes.

22 Q Please indicate where you see that person.

23 A He is sitting down with a blue suit on.

24 MR. FRIEDMAN: Indicating the defendant Pecorino--
25 Mr. Felice.

7A

1 mmhh 3 Salvato-direct

2 Q How long have you known Louis Santos?

3 A Approximately four years.

4 Q Did you meet him in 1973 and 1974?

5 A 1973.

6 Q Was that the first you had ever met Louis Santos?

7 A I think so.

8 Q Where did you meet him in 1973?

9 A At a bar called the Alley Cat.

10 Q How long have you known Joseph Pecorino?

11 A About 20 years.

12 Q Do you know a person named Anthony Finn?

13 A Yes.

14 Q When was the last time you saw Anthony Finn?

15 A On March 4, 1973, I think it was.

16 Q How do you recall the exact date?

17 A It was the night before his death.

18 THE COURT: Would you read the last few questions

19 and answers.

20 (Testimony read)

21 Q How did you learn the date of Mr. Finn's death?

22 A I was present.

23 Q How did you learn the date?

24 A I don't understand what you mean by "learn the

25 date."

8A

1 mmhh 4 Salvato direct

2 THE COURT: Are you sure it is 1973 or 1974?

3 A No, I'm sure it's 1974.

4 Q From 1973 up to the time of Mr. Finn's death,
5 how often did you meet with Louis Santos?

6 A Maybe two or three times a month.

7 Q And where did you meet with him during that period
8 of time?

9 A In a bar called the Alley Cat or in Separate Tables.

10 Q Do you remember if in that period of time you
11 ever met with Joseph Pecorino?

12 A Yes.

13 Q Where did you meet with him?

14 A In the bar called the Alley Cat.

15 Q Approximately how often did you see Joseph
16 Pecorino in the Alley Cat?

17 A Three or four times a week.

18 Q During that same period of time did you ever
19 meet with Phil Felice?

20 A Yes.

21 Q Where did you meet with Phil Felice?

22 A In a bar called the Alley Cat.

23 Q Approximately how often during that period of
24 time?

25 A Three or four times a week.

9A

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mmh S

Salvato-direct

934

MR. STALONAS: Could we have a clarification of
"met with"?

Q If I asked you how often would you see him
during those periods of time, would your answer have been
the same?

A Yes.

Q When did you first meet Tony Finn?

A Oh, about eight or nine months previous
to his death.

Q Where did you first meet him?

A I'm not sure, but I think it was in a bar
on 44th Street called the Villanova. He was in a bar
when I was introduced to him.

Q Who, if anyone else, was present at that time?

A Sandy Pontillo.

Q Who introduced you to Mr. Finn?

A Sandy Pontillo.

Q Between the time when you were introduced to
Mr. Finn and Mr. Finn's death did you ever conduct any
business with Mr. Finn?

A Yes.

Q Would you please tell the jury what kind of
business you and Mr. Finn had?

A I sold him two eighths of cocaine.

10A

1 mhhh (Salvage-direct

2 Q What do you mean when you say an eighth of
3 cocaine?

4 A Four ounces is an eighth of cocaine.

5 Q What is four ounces one-eighth of?

6 A A kilo.

7 Q How much did you receive for each of the eighths
8 of cocaine which you sold to Mr. Finn?

9 A I think it was around \$3,700, in that vicinity.

10 Q Where did you obtain the cocaine which you
11 sold to Mr. Finn?

12 A From a guy by the name of Piazza.

13 Q Do you know him by any other name?

14 A Joe Cafone, I think it is.

15 Q Did you ever talk to Mr. Santos about Tony Finn.
16 before Tony Finn's death?

17 A Yes, two weeks prior.

18 Q Where did you have that discussion?

19 A I think it was in the Alley Cat.

20 Q Who, if anyone else, participated in that
21 discussion?

22 A Nobody.

23 Q Would you please tell the jury what you said
24 to Mr. Santos at that time and what Mr. Santos said to you?

25 A Mr. Santos told me that he had word from a Thomas

11A

1 mmhh 7 Salvato-direct

2 Petito that Tony Finn was an informer for the DEA.

3 THE COURT: I didn't get the name of the person--

4 Thomas --

5 THE REPORTER Petito.

6 Q What, if anything, did you say to Mr. Santos
7 when he told you that?

8 A I said I didn't believe it.

9 Q Could you please speak up a little louder?

10 A I said I didn't believe it.

11 Q Did you know at that time a person by the
12 name of Thomas Petito?

13 A Yes.

14 Q Had you ever prior to that time talked to
15 Thomas Petito?

16 A Yes.

17 Q Had you talked to him about Tony Finn?

18 A Yes.

19 Q Do you know Thomas Petito by any other name?

20 A Little Tommy.

21 Q Did you talk to Mr. Santos at any other time before
22 Mr. Finn's death?

23 A On the night before, on the night of March 4th
24 in Separate Tables.

25 Q Would you please tell the jury who, if anyone else,

12A

1 mmhh 8 Salvate-direct

2 was present when you talked to Mr. Santos?

3 A There was somebody else present, but I don't
4 remember who it was. I was introduced to him by Louis
5 Santos.

6 Q What did Mr. Santos say to you at that time?

7 A He said he had word from a friend of his uptown
8 that Tony Finn was an informer on a big roundup case, a
9 narcotic case.

10 Q What, if anything, did you say to him about
11 the presence of the stranger at that time?

12 A I said, "Who is this guy?"

13 MR. STALONAS: Objection as leading.

14 THE COURT: Overruled.

15 A (Continuing) I asked him who this guy was and
16 he says, "He is all right; he is a friend of mine."

17 Q What, if anything, did you say to Mr. Santos
18 after he told you he believed Tony Finn was an informant
19 on a roundup?

20 A I said I didn't believe it.

21 Q Did you have any further discussion at that time
22 about Mr. Finn?

23 A He says, "Well, do me a favor. He owes me \$2,500.
24 I would like to get my money from him, being he is buying
25 a house in Greenwood Lake."

13A

1 mmhh 9 Salvate-direct

2 Q Did he say anything else?

3 A He says, "If you can make an arrangement for
4 me to see him." He wanted his money.

5 Q What if anything did you say to him?

6 A I said I will try to do it.

7 Q Whom were you with other than Mr. Santos while
8 you were at Separate Tables?

9 A Me personally?

10 Q Yes.

11 A Myself.

12 Q Did you see anyone else in Separate Tables
13 whom you knew or recognized?

14 A Yes.

15 Q Would you please tell the jury who that was?

16 A A guy by the name of Chino, his wife, and this
17 other stranger that I didn't know.

18 Q This person, Chino, do you recall what name his
19 wife had?

20 A No.

21 Q Was Chino or his wife present at the discussion
22 which you just described with Louis Santos?

23 A I don't think so.

24 THE COURT: Does Chino have another name?

25 Q Do you know this person Chino by any other name?

14A

- 1 mmhh 10 Salvato-direct
- 2 A Chino. I know his name is John Vasquez.
- 3 Q Have you just learned that recently?
- 4 A Yes.
- 5 Q Where did you go after you left the Alley Cat
- 6 on the night of Finn's --
- 7 A The Alley Cat?
- 8 Q I'm sorry. Where did you go after you left
- 9 Separate Tables on the night of Finn's death?
- 10 A I went to a bar by the name of Ruby's.
- 11 Q Did you go to that bar with anyone?
- 12 A No.
- 13 Q Who, if anyone, did you meet when you arrived
- 14 at Ruby's?
- 15 A I met Tony Finn there and another guy by the
- 16 name of Murray Schneider.
- 17 Q Did you meet anyone else while you were at Ruby's
- 18 restaurant?
- 19 A I don't recollect.
- 20 Q Approximately how long did you stay in Ruby's
- 21 restaurant?
- 22 A About half an hour to an hour.
- 23 Q Do you recall whether or not you were introduced
- 24 to anyone as a friend of Tony Finn's?
- 25 MR. BORG: That is objected to as leading.

15A

1 mmhh ll Salvate-direct

2 THE COURT: Sustained.

3 Q Where did you go when you left Ruby's restaurant?

4 A I went to a club on 13th Street and Avenue A.

5 It is a social club, and we went there for a few drinks.

6 Q Did you know that club by any name?

7 A It was Butch's place, as far as I know.

8 Q It is difficult to hear you.

9 A As far as I know, it was Butch's place.

10 Q Whom did you stay with when you were at Butch's
11 place?

12 A It was me, Tony Finn and Murray Schneider.

13 Q Approximately how long did you stay at Butch's
14 place?

15 A About an hour.

16 Q What, if anything, did you do while you were there?

17 A Just had a few drinks.

18 Q Do you recall where you went after you left
19 Butch's place?

20 A I went to a bar called the Alley Cat.

21 Q Who, if anyone, went with you to the Alley Cat?

22 A Me and Tony Finn.

23 Q Now, prior to arriving at the Alley Cat had you
24 had any discussion with Tony Finn about the conversation
25 earlier that night which you had in Separate Tables with

16A

1 mmhh 12 Salvato-direct

2 Louis Santos?

3 A I just told him that Louis wanted his money
4 and he wanted to see him about his money.

5 Q Do you recall approximately what time it was
6 when you entered the Alley Cat?

7 A Anywhere from 12:30 to 1 o'clock.

8 Q Who, if anyone else, was present when you entered
9 the Alley Cat?

10 A There was Louis, Sally, Philly, Carl, Chinc, his
11 wife and another girl.

12 Q Do you know this person Sally by any other name?

13 A Sally Scudiero.

14 Q Could you please tell the jury what, if anything,
15 you observed after you entered the Alley Cat?

16 A We went into the bar and we ordered a drink.

17 Q Could you speak up a little louder, please?

18 A We went in the bar and ordered a drink. Then
19 Louis called him over.

20 Q Called who over?

21 A Tony Finn over and had a discussion with him,
22 and all of a sudden a fight broke out. And then he took
23 out a .45 and threw a shot at him.

24 Q Who took out a .45?

25 A Louis Santos.

17A

1 mmhh 13

Salvato-direct

2 Q How do you know he took out a .45?

3 A Because I seen it.

4 Q What do you mean when you say he threw a shot
5 at him?

6 A There was an argument and Tony Finn had hit him,
7 and at that moment -- I don't recollect exactly -- a shot
8 went off towards the direction of Tony Finn.

9 Q What, if anything, happened next?

10 A Then he fell to the floor.

11 Q Who fell on the floor?

12 A Tony Finn, and he started getting a beating.

13 Q Who began to beat him?

14 A Sally, Louis, and this Chino.

15 Q What, if anything else, did you observe?

16 A Nothing. I tried to stop it.

17 Q Tell the jury how you tried to stop it.

18 A I told Louis, "What are you doing?" I said, "He
19 came in here with me." And then when Finn was on the
20 floor a gun fell out of his waistband, and Sally Scudiero
21 picked it up and pointed it at me and told me to mind my
22 own business.

23 Q Had you seen that gun which fell out of Finn's
24 waistband area that night?

25 A Yes.

18A

1 mahh 14 Salvato-direct

2 Q Where had you seen it?

3 A In his waistband.

4 Q What kind of gun was it?

5 A A .375 magnum.

6 Q What, if anything, did you do after Sally
7 Scudiero told you to mind your own business?

8 A I called Louis on the side and I said, "Louis,
9 what are you doing? He came in here with me." He said,
10 "Don't worry. Nothing is going to happen. Just leave."

11 Q What did you do after Louis Santos told you to
12 leave at that time?

13 A I left.

14 Q Did you hear Louis Santos say anything else
15 to anyone else before you left?

16 A He told everybody to leave the place.

17 Q I show you Government's Exhibit 14 in evidence.
18 Can you identify that person?

19 A It is Anthony Finn.

20 Q I show you Government's Exhibit 20 and 20A in
21 evidence. Can you identify that person?

22 A Sally Scudiero.

23 Q I show you Government's Exhibit 24 in evidence.
24 Can you identify that person?

25 A Chino.

19A

1 mmhh 15 Salvato-direct

2 Q Did you ever speak to Louis Santos after Tony
3 Finn's death about Tony?

4 A About a month after his death.

5 THE COURT: Wait a second. Is there anything
6 between? This man left and that is the end of his contact
7 with the Alley Cat on March 4th or 5th? Is that what I
8 understand?

9 MR. CAREY: Yes.

10 THE WITNESS: Yes.

11 THE COURT: You left on March 4th or 5th, on that
12 night?

13 THE WITNESS: Right.

14 THE COURT: Did you ever go back to the Alley Cat?

15 THE WITNESS: You mean in preceding nights?

16 THE COURT: The next night?

17 THE WITNESS: No, not the next night.

18 THE COURT: Go ahead.

19 Q After the night of Finn's death did you ever
20 talk to Louis Santos about Finn's death?

21 A Yes.

22 Q Where did you have that conversation?

23 A I think it was in the Alley Cat.

24 Q Who, if anyone else, was present during that
25 conversation?

20 A

1 mmhh 16 Salvato-direct

2 A Nobody.

3 THE COURT: When?

4 Q Would you say when you had that discussion?

5 A A few weeks to a month after his death.

6 THE COURT: Go ahead.

r3

7 Q Would you please tell the jury what Louis Santos
8 told you at that time and what you said to him?

9 A I told him, I said, "What happened? What did you
10 do to me that night? You put me in a bad predicament,
11 because I left with him?" And he said, "It had to be done."
12 He says, "He was sitting down and we were going to leave
13 him alone, and then he run up and ran through the window
14 and Sally pulled him down and shot him."

15 Q What, if anything, did you say to Louis Santos
16 after he told you that?

17 A I says, "You put me in a bad predicament, because
18 I had nothing to really do with it; I didn't bring him in
19 for any other reason but to arrange a money problem."

20 Q When you left the Alley Cat the night Finn was
21 killed, do you recall where Finn was at that time?

22 A When I left?

23 Q Wher was the last place that you saw Finn alive?

24 A He was sitting on his chair with his back to the
25 wall.

21A

1 mmhh 17 Salvato-direct

2 Q Where was that chair located?

3 A Near the office.

4 Q Near the office where?

5 A In the Alley Cat.

6 Q Did you ever talk to Louis Santos another time
7 about Tony Finn's death?

8 A Yes, a couple of months ago.

9 Q Who, if anyone else, was present at that
10 conversation?

11 A Nobody.

12 Q Would you tell the jury what you said to Louis
13 Santos at that time and what he said to you?

14 A I says, "What happened?" I says, "Who is the
15 witnesses in the case over here?" I says, "How did I get
16 involved in this case?" And then he proceeded to tell me,
17 he says, "There is no witnesses in this case." He says,
18 "Nobody was there when it happened."

19 Q What, if anything, did he say to you about how
20 it happened?

21 A He said when he was sitting down he got up
22 and he ran out to go out through the window, to throw himself
23 through the window, and he had told me, he says, that when
24 Sally pulled him down, he just shot him.

25 Q Had he ever told you that Finn had been shot

22A

1 mmhh 18

Salvato-direct

2 anywhere else?

3 A No.

4 Q Did you ever talk to Philip Felice after the
5 night of Tony Finn's death about Tony Finn?

6 A A couple of months ago.

7 Q Who, if anyone else, was present during that
8 conversation?

9 A I don't think anybody else was.

10 Q Would you please tell the jury what you said
11 to Mr. Felice at that time and what he said to you?

12 A I asked him what happened, and he didn't say
13 anything. He said he cleaned it up.

14 Q Can you describe what the inside of the Alley
15 Cat looked like in 1974 at the time of Tony Finn's death?

16 A When you walk in there was a long bar on the right
17 and there was, I think, tables and chairs on the left with
18 a partition, and then a big room in the back, two big rooms
19 in the back and a kitchen in the back of that.

20 Q Where was this office in the Alley Cat located
21 to which you referred to earlier?

22 A Right by the end of the bar, to the beginning
23 of the partition.

24 Q Which side of the bar room was it on? The same
25 side of the bar or the opposite side?

23A

- 1 mmhh 19 Salvato-direct
- 2 A The opposite side of the bar.
- 3 Q What was the lighting like inside the Alley Cat?
- 4 A Dim.
- 5 Q Can you describe the door, the main entrance door
- 6 to the Alley Cat?
- 7 A It was made out of wood.
- 8 Q What else did it have?
- 9 A It had a glass tunnel in it.
- 10 Q Where did you live in 1973 and 1974?
- 11 A 1705 Shore Parkway, Brooklyn.
- 12 Q Do you recall what your telephone number was
- 13 at that time?
- 14 A Not offhand.
- 15 Q Do you recall in whose name the telephone was
- 16 subscribed?
- 17 A I think it was an unlisted number in my name.
- 18 Q Do you recall what kind of car Tony Finn had
- 19 in 1973 and 1974?
- 20 A It was a small compact car.
- 21 Q Do you recall what color it was?
- 22 A Sort of a beige, a beige color or a tan color,
- 23 something like that.
- 24 Q Did you ever have occasion to ride with Mr.
- 25 Finn in an automobile?

24A

1 mmhh 20 Salvato-direct

2 A Yes.

3 Q Was Mr. Finn ever with you at any time when
4 your automobile was shot at?

5 A No.

6 Q How many years of your life have you spent in
7 jail up to this point?

8 A Total?

9 Q Yes.

10 A About two years.

11 Q Are you currently incarcerated?

12 A Yes.

13 Q Are you currently serving a sentence?

14 A, Yes.

15 Q Would you tell the jury what it is that you
16 are serving a sentence for?

17 A I am serving 1 to 5 for conspiracy to import
18 and distribute large quantities of narcotics.

19 Q When were you convicted of that crime?

20 A I took a plea to that crime.

21 Q When did that occur?

22 A Some time in April of 1975 or 1976, I mean,
23 1976.

24 Q How long before that plea had you been arrested?

25 A In July, July 24, 1975.

25A

mmhh 21 Salvato-direct

Q Were you charged with any other offenses in this particular case?

A Yes.

Q What were you charged with?

A Conspiracy to violate the civil rights and knowing concealing of knowledge.

Q Were you also charged with obstruction of justice?

A I mean, obstruction of justice.

Q Have you entered a guilty plea to either of those charges?

A Yes, to obstruction of justice.

Q When did you enter a guilty plea to that charge?

A A couple of Mondays ago. I don't remember the date. I think it was May 2nd.

Q Do you know what the maximum punishment you can receive if sentenced on your guilty plea?

A Yes.

Q What is the maximum punishment?

A Five years or \$5,000 fine.

Q Do you know what the maximum punishment is if you were convinced of conspiracy to violate Mr. Finn's civil rights?

A Yes.

Q What was that?

26A

1 mmhh 22

Salvato-direct

2 A Any amount of years or life.

3 Q Why did you plead guilty to obstruction of justice?

4 MR. STALONAS: Objection.

5 THE COURT: Overruled.

6 MR. STALONAS: Objection to the form of the
7 question, the "Why" question.

8 THE COURT: Overruled.

9 Q Would you please answer the question?

10 A Because I did not want to spend the rest of
11 my life in jail.

12 Q When did you first agree to cooperate with the
13 government and testify in this case?

14 A On May 2nd, I think it was.

15 Q Of what year?

16 A Of this year, 1977.

17 Q In return for your agreement to cooperate what
18 promises, if any, have been made to you?

19 A None whatsoever.

20 Q Have you been allowed or permitted to do any-
21 thing with respect to this particular case?

22 A No.

23 Q In return for your cooperation?

24 A No.

25 Q Has any agreement been reached with you with

27A

mmhh 23 Salvato-direct

relation to this case?

A None whatsoever.

Q Mr. Salvato, I show you what has been marked as Government's Exhibit 30 for identification. Are those your initials on the front page?

A Yes.

Q Are those your initials on the second page?

A Yes.

Q On the third page?

A Yes.

Q Is that your signature on the fourth page?

A Yes.

Q Does that refresh your recollection -- if you need to read it, please read it -- does that refresh your recollection about whether or not any promises were made to you in return for your cooperation?

A That I would have immunity on the civil rights charge and anything else I testified to.

Q What, if any, other promises were made to you?

A None whatsoever.

Q Please look at that agreement again.

Have any promises been made to you --

THE COURT: Wait. You have asked him to read it.

MR. CAREY: I withdraw my request that he read it.

28A

1 mmhh 24

Salvato-direct

2 THE COURT: You withdraw your request?

3 MR. CAREY: Yes.

4 Q Have any promises been made to you with respect
5 to your family?

6 A Nothing, except they are given supplement to
7 line on.

8 Q What is that supplement in connection with?

9 A My testimony.

10 Q Does your family live where they lived before?

11 A No.

12 Q Would you please look at Government's Exhibit
13 30 and read it carefully to yourself.

14 (Pause)

15 Q (Continuing) Did you look at the entire
16 agreement?

17 (Pause)

18 Q Does that agreement marked Government's
19 Exhibit 30 for identification encompass all the promises
20 which have been made to you?

21 A Yes.

22 MR. CAREY: Your Honor, the government offers
23 Government's Exhibit 30 in evidence.

24 MR. FRIEDMAN: Objection.

25 THE COURT: Sustained.

29 A

mmhh 25

Salvato-direct

Q Are there any other promises which have been made to you which you have not yet told the jury?

A None whatsoever. No other promises were made to me.

Q Have you told the promises which are set forth in Government's Exhibit 30?

A That I will cooperate here and in any other trials or any other matters that you might think I am needed in.

THE COURT: Let me see that.

I will allow this document in evidence.

(Government's Exhibit 30 received in evidence.)

MR. STALONAS: May we approach the bench, your Honor?

THE COURT: Yes.

(At the side bar.)

MR. STALONAS: I object to it on the general ground because I think it is self-serving and I think the witness can testify, but, specifically, referring to page 3 it goes on to say that he is testifying against people who in the opinion of the government --

THE COURT: Show it to me, show me where, and I will read it.

MR. STALONAS: Here (pointing).

THE COURT: I have no objection to blocking out

30 A

1 mmhh 26

Salvato-direct

2 some of these lines.

3 MR. CAREY: Your Honor, the government would
4 consent to the fact of withholding the document from this
5 jury, unless a question should be raised about the speci-
6 fications of the agreement, if the jury does request it.

7 THE COURT: I will bracket out that portion.

8 MR. FRIEDMAN: I will object to it on grounds
9 of relevance.

10 THE COURT: The government has the right to
11 bring out the agreement it has with its own witness;
12 it does not have to wait for you to bring it out on cross-
13 examination.

14 MR. STALONAS: Notwithstanding the fact that
15 the Court will redact that, I still object on the grounds
16 of it being a self-serving declaration, both on behalf
17 of the witness and the government.

18 THE COURT: Overruled.

19 MR. BORG: I join in Mr. Stalonas' objections.

20 (In open court)

21 BY MR. CAREY:

22 Q Mr. Salvato, you stated earlier that you entered
23 a guilty plea. Have you been sentenced on that guilty
24 plea at this time?

25 A No.

31A

mmhh 27

Salvato-direct

Q Have any promises been made to you by the government regarding how much time you will receive as a sentence?

A None whatsoever.

MR. CAREY: I have no further questions of this witness.

THE COURT: I suggest we ought to adjourn for lunch and return at quarter of 2.

(Jury excused)

THE COURT: Whom do you have for this afternoon?

MR. CAREY: We have Mr. Rivera and I have requested Dr. Baden be present.

THE COURT: What about Mr. McGuinness, Mr. Simmons and Mr. Kobell?

MR. CAREY: We don't intend to call Mr. Kobell. I doubt that we will call Agent Simmons. We are not going to call. Agent Simmons, your Honor, and we are not going to call Agent Kobell.

Let me look at the list again.

THE COURT: Simmons, Rivera and Baden? Is that correct?

MR. CAREY: That is it, your Honor.

MR. STALONAS: What about Mr. McGuinness?

MR. CAREY: Yes, we will call Mr. McGuinness.

32A

1 mmhh 28

2 THE COURT: You are calling McGuinness?

3 MR. CAREY: But I expect he will not be here
4 today. He's told us he will not, otherwise again requested.
5 I have not heard the results of the second request.

6 THE COURT: All right.

7 MR. CAREY: Possibly he may be here late today.

8 THE COURT: All right.

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10 (Luncheon recess)
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AFTERNOON SESSION(1:45 p.m.)

(In the robing room.)

MR. CAREY: I'd like to inform the court, your Honor, of the status of the government's case. We havenot really disserved the court or defense counsel because our original estimate was a 10-day trial --

THE COURT: That was wrong in the beginning, Mr. Carey, and I told you so. I told you you were wrong in your estimate in the very beginning.

MR. CAREY: I remembered your Honor saying you thought it would be over in two weeks.

THE COURT: I told you on Monday it wouldn't take you more than five or six days to put your case in. Here is the fifth day and you really should be finished with it, but I'll give you another day to Monday.

MR. CAREY: I just wanted to tell you that Dr. Baden, the medical examiner, is in Philadelphia today and he will not be available.

THE COURT: You have a little thing called a subpoena that you use very drastically when you want to.

1 bsa2

2 I told you on Wednesday afternoon to make
3 sure you were loaded up with witnesses. You had
4 that subpoena that could have been out in a half hour
5 and Mr. Baden wouldn't be in Philadelphia, he would
6 have been here testifying, and he would not ignore a
7 subpoena of the federal government.

8 MR. CAREY: He may be under subpoena
9 in Philadelphia, I don't know.

10 THE COURT: What do you have today?
11 You have Salvato to finish.

12 MR. CAREY: His cross. We have Agent
13 Spero for about two minutes to explain what happened
14 to the clothing after it was taken from the Property
15 Clerk's office. It seems hardly necessary, but
16 your Honor seems to want the government to put more
17 witnesses on.

18 THE COURT: You have the bag in the Police
19 Department. You have to get the bag transferred
20 from the Police Department to the FBI, which I assume
21 is the same bag.

22 MR. STALONAS: I touched that bag. I could
23 be called as a witness.

24 THE COURT: You only left latent finger-
25 prints.

35A

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MR. CAREY: We have Thomas McGuinness to testify on direct for no more than five minutes -- of all the witnesses we have left --

THE COURT: Today is Friday. What do you have today? Salvato cross.

MR. CAREY: Rivera, Spero, stipulations which are being typed now with respect to the birth certificate and the identification of the body, a stipulation which we agreed to previously.

MR. FRIEDMAN: We agreed on that.

MR. STALONAS: Can we state it for the record?

MR. CAREY: We can state it on the record.

THE COURT: Go ahead. What else?

MR. CAREY: That is it, your Honor.

THE COURT: What do you have Monday?

MR. CAREY: De Fillippis will be here Monday morning.

We have Police Officer Thomas Sullivan, a witness that can be here today, your Honor, but your Honor has yet to rule on the memo which we presented.

THE COURT: Yes. I have read it.

MR. CAREY: It will take about an hour

36A

1 bsa

2 and a half for Sullivan. His direct testimony is
3 only 10 minutes, if your Honor permits it.

4 THE COURT: I am always bothered by
5 these similar acts because, while they come in under
6 a variety of exceptions, they all of course tend to
7 show propensity.

8 I am going to let Rivera's in, which is
9 No. 5 on page 8 of the memorandum No. 4. That is
10 the one if you ever need a hit man -- that one.

11 MR. FRIEDMAN: Your Honor will give the
12 jury the same instruction --

13 MR. STALONAS: This may be improper in
14 the sense that I don't represent Felice, but I was
15 under the impression that these were allowed in as
16 to the defendant Felice because he is an unindicted
17 co-conspirator.

18 I haven't heard a piece of evidence in
19 this case that would deem him an unindicted co-con-
20 spirator on the first count of this indictment. I have
21 heard all the government substantive witnesses --

22 THE COURT: Let's see who else you
23 have for Monday. You have De Fillippis, Sullivan.
24 Go ahead.

25 MR. CAREY: Monday we have Dr. Baden.

37A

1 THE COURT: What will he testify to.

2 MR. CAREY: He's the medical examiner.

3 Mr. McGuinness. He is going to testify
4 about a discussion he had with Mr. Felice.

5 Evan Hodge, a special agent, who will testify
6 about ballistics.

7 De Fillippis will identify documents seized
8 from Santos and from Mr. Rosado.

9 The New York Telephone witness will simply
10 introduce subscriber cards for a number of telephone
11 numbers.

12 Mr. Sullivan will testify on Monday. That
13 is testimony as to the facts that he can testify about.

14 MR. BORG: I'd like to ask if Mr. De Fil-
15 lippis is going to testify to the recovery of personal
16 property of Santos on this case or the case that arrested
17 him --

18 MR. CAREY: On the violation of parole.

19 MR. BORG: You know he was acquitted on
20 that charge.

21 MR. CAREY: It's just about address books.

22 MR. BORG: I will make an objection as
23 to De Fillippis' testimony because if he testifies as
24 a New York State parole officer that he picked him up
25

for violation of parole, it goes now before the jury that Santos has a prior conviction.

MR. CAREY: He will testify that in 1974 he met the man -- it is not necessary to introduce the peripheral facts --

THE COURT: He's asking you how you are going to do it.

MR. CAREY: He met the man and examined his telephone book and it was photocopied by him and these are -- this is the photocopy of those records.

MR. BORG: Are you going to do it after you ask him, "Are you a member of the New York State Parole Division"?

MR. CAREY: I will not.

THE COURT: If you don't cross examine him on that he won't go into it.

MR. BORG: I can't cross examine him at all.

THE COURT: Why?

MR. BORG: The first question is, under what opportunity -- under what circumstances, and it will all come out. By that effect, by having him put on, I --

THE COURT: He's entitled to get the

evidence out.

MR. FRIEDMAN: I have some problems with that too. I believe that there are statements made by Finn.

THE COURT: Finn?

MR. FRIEDMAN: One of them made statements to him.

MR. STALONAS: Rosado made statements to Mr. De Fillippis back in 1974 and 1975 concerning various criminal activities.

MR. FRIEDMAN: Also --

MR. CAREY: He ~~don't~~ testify to that.

MR. BORG: That is third-party hearsay.

THE COURT: One thing I'm sure of -- are you introducing testimony as to Santos and Scudiero regarding a contract killing of an attorney in Detroit?

MR. CAREY: No.

THE COURT: That takes care of that.

The one known as B-2 on page 5 of memorandum No. 4, Pecorino and Felice, October 4, 1969, I am not letting that in, and I am using that solely from the basis of time, October 4, '69, a beating up in the Telstar Club.

The only similar acts we have left, as I

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gather it, are Rivera and Sullivan, right?

MR. CAREY: Right.

THE COURT: Sullivan is solely against Pecorino. That is when he had a gun. Are you familiar with that testimony?

MR. STALONAS: Yes. I don't know what the time frame was.

THE COURT: 1975, 5 a.m.

The second one is Rivera, his testimony against Pecorino and Felice.

MR. STALONAS: On the gun matter. I don't see how it reflects on any issues in this case. I don't think it shows motive. I don't think it shows intent. I don't know how it reflects on this case.

THE COURT: Mr. Carey.

MR. CAREY: Yes, your Honor. The matter about the arrest of Mr. Pecorino at a time when he indicated he was carrying a gun on his way to return to the Alley Cat because he expected trouble there --

MR. STALONAS: I don't think that that is what it said in the memo. That may be additional. It says why did he have a gun. Because he was having

some problems at the Alley Cat.

MR. CAREY: Trouble at the Alley Cat.

MR. STALONAS: It doesn't say he was on his way --

THE COURT: That he had some trouble there earlier in the evening. The fair inference is that he is returning and that he needed the gun in case there was further trouble at the Alley Cat.

MR. STALONAS: That's the memo we got today.

THE COURT: This is the memo you got several days ago.

MR. STALONAS: Is that 4?

THE COURT: No. 4. You received it on May 5th.

MR. STALONAS: All right. Then I stand corrected.

THE COURT: It wasn't May 5th. It must have been the 10th.

Anyhow, you have had it for several days.

Mr. Carey, you tell me about that.

MR. CAREY: One of the questions that the jury will have to determine in their deliberations, in addition to the innocence or guilt of the defend-

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ant is whether or not death resulted as a consequence of the conspiracy which was formed between the defendants charged with the conspiracy.

In order to make that determination the government is offering this evidence, as evidence of foreseeability on the part of Pecorino that people who frequented the Alley Cat, your Honor, not only engaged in what he described as trouble, but that in order to cease or control that, or to in some other way affect the outcome of whatever developments should occur in the Alley Cat, a weapon was necessary. It also suggests by inference that Mr. Pecorino was a regular at the Alley Cat --

THE COURT: There is no doubt about that now.

MR. CAREY: Therefore, it corroborates other witnesses.

THE COURT: This is a little prejudicial corroboration, isn't it?

MR. CAREY: Most of these things, your Honor, are --

THE COURT: Don't tell me you want this to prove that Pecorino frequented the Alley Cat.

MR. CAREY: Your Honor, I will be per-

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fectly candid with you and tell you that I do want
it for that reason.

THE COURT: If that's the reason, then
it is excluded.

MR. CAREY: That's not the only reason,
your Honor. That is another --

THE COURT: That is the last reason,
way at the bottom.

MR. CAREY: The principal reason is the
matter I just told you about, about the foreseeability
of serious consequences of any fighting within the
Alley Cat.

It also shows that Mr. Pecorino felt com-
patible using or carrying a gun in the Alley Cat,
and that the evidence in this case suggests that the
Alley Cat was the place selected for the murder --
I should say for the assault upon Mr. Finn --

THE COURT: I think the Alley Cat was
selected as a place to beat him up. I'm not sure
that anybody can say from the evidence here -- that
I have heard so far -- they intended to put a bullet
through his head.

Pecorino isn't involved in any shooting
that I know of with a gun.

1 MR. BORG: Neither is Santos.

2 MR. STALONAS: As a matter of fact,
3 there is only one witness that places him in the bar
4 that night and that's Mr. Rosado. The other two eye-
5 witnesses say he wasn't there.
6

7 MR. FRIEDMAN: Further, Judge, it will
8 be awfully prejudicial to Mr. Felice, who is employed
9 at the Alley Cat and has to be there.

10 THE COURT: I don't know who owned the
11 Alley Cat.

12 MR. FRIEDMAN: I don't know either, but
13 Felice worked there.

14 MR. STALONAS: According top the reports
15 I have read, about 12 different people are alleged
16 to have owned this bar at different times.

17 MR. CAREY: It is precisely because the
18 evidence against Mr. Pecorino is --

19 THE COURT: So thin that you would really
20 like to get this in to nail him to the cross. That
21 I understand. I understand your motive and your
22 intent.

23 MR. CAREY: Since Mr. Rosado is the only
24 one to testify about that, this is not simply cumu-
25 lative -- that is, about Mr. Pecorino's involvement --

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2 this is not simply cumulative testimony with regard
3 to --

4 THE COURT: Let's go on to Pecorino, Felice
5 and Rivera, the fellow you have outside.

6 MR. CAREY: What is the question, your
7 Honor?

8 MR. STALONAS: May I ask for an offer
9 of proof as to what he's going to testify to first?

10 THE COURT: Let's assume that Rivera will
11 say that Pecorino and Felice said to him, "If you
12 ever need a hit made we can do a good job for you."

13 MR. STALONAS: Additionally, today he
14 learned that he's going to testify --

15 THE COURT: I'm sorried about this one.

16 MR. CAREY: Your Honor, that testimony
17 is probative of their wilfulness in entering into this
18 conspiracy. It is probative of, once again, their
19 foreseeability. It is probative of Mr. Pecorino's
20 foreseeability that any conspiracy he entered into to
21 intimidate a witness might result, wilfully on his part,
22 knowingly on his part, in the death of the person who
23 was the object of the intimidation.

24 MR. STALONAS: Before I say --

25 THE COURT: I made up my mind. No.

46A

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2 This is really propensity. It's really,
3 as Judge Friendly calls it -- I'm not quoting him
4 correctly -- but it is the dirt that comes in with this
5 stuff.

6 This is propensity to beat people up, not that
7 there was an in-ent to beat these people up.

8 The narcotics thing is a different thing.
9 Tell me about that. I gather this is to show that
10 Rivera had a narcotics deal with whom?

11 MR. PATTERSON: Rivera will testify that
12 on a number of occasions he heard both Pecorino and
13 Felice discuss and saw them deal in amounts of
14 narcotics larger than what would be used for personal
15 use, and say they were going to use them for retail.
16 In the cases where they purchased them, they purchased
17 them from Rivera's business partner, a man named Paul
18 Fernandez.

19 THE COURT: This is direct testimony.
20 This is not hearsay?

21 MR. PATTERSON: Rivera was present, heard
22 the conversations, saw the transactions.

23 MR. STALONAS: When? Aside from the
24 truthfulness of it, can I ask when this is alleged
25 to have occurred?

MR. PATTERSON: On a number of occasions between 1971, when Rivera first met the two defendants, and 1973, when he left New York. It happened a number of times. he will testify, although he cannot remember specific dates.

THE COURT: When did he leave in 1973?

MR. PATTERSON: I'm not sure of the exact date in 1973.

THE COURT: Can you find out when we get outside?

MR. PATTERSON: I believe he's in the witness room and I can go ask him.

(Pause.)

MR. PATTERSON: Your Honor, the time period is between September 8th and June of '7 -- of '71 and June of '73. Rivera can't remember the exact date he went to Puerto Rico.

MR. STALONAS: September, '71 to June, '73?

MR. PATTERSON: Yes.

THE COURT: That is nine months away. This is Pecorino and Felice?

MR. PATTERSON: Yes, sir.

MR. FRIEDMAN: Felice is not charged in

48A

any count as to his dealings in narcotics.

MR. STALONAS: He's not charged under the first count, nor is he yet -- yet have I heard evidence to make him an unindicted co-conspirator on the first count.

MR. FRIEDMAN: He is not charged with any narcotics transaction.

THE COURT: I think they are entitled to get in that narcotics deals were made in the Alley Car bar.

MR. FRIEDMAN: They will get testimony from a Mr. Rivera that he saw a certain transaction. Mr. Rivera is not going to be able to testify that anything he saw in Mr. Felice's possession or Mr. Pecorino's possession was a narcotic. This has been coming in throughout the entire trial here, and --

THE COURT: You don't have to be able to testify that I had it tested to find out it was 83 per cent pure before it comes in.

MR. FRIEDMAN: He doesn't have to. What you have here is testimony of more narcotics and more narcotics. To a man who is -- the only count in the indictment is as an accessory after the fact.

THE COURT: It has to come in.

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2 MR. STALONAS: Is this to show motive
3 on the part of --

4 THE COURT: This is to show you had
5 deals for narcotics in this place by the principal
6 characters as a regular course, and there was a basis
7 to try to get rid of Finn.

8 MR. STALONAS: There is no evidence that
9 Finn is involved in this in any way, shape or form.

10 THE COURT: There doesn't have to be.

11 MR. STALONAS: There is no evidence that
12 Finn ever even frequented the Alley Cat during the
13 time of September to June of 1973.

14 THE COURT: There doesn't have to be.
15 This shows that this is a place where deals are made by
16 these men for narcotics. What greater motive can you
17 have but to knock off a fellow whom they claim is
18 a stoolpigeon on narcotics.

19 MR. STALONAS: There is no testimony
20 putting Mr. Finn at these transactions.

21 THE COURT: It doesn't have to be.

22 MR. FRIEDMAN: Felice and Pecorino aren't
23 principals in this thing. If anything, Pecorino
24 joined something that is going on.

25 Insofar as Felice goes, he never became

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part of this conspiracy.

THE COURT: It comes in.

MR. FRIEDMAN: It will be over objection,
your Honor.

THE COURT: Sure.

(Continued on next page.)

T2 pm 2

3 (Proceedings continued in the courtroom with
4 the jury in the box.)

5 J O S E P H A. S A L V A T O, resumed.

6 CROSS-EXAMINATION

7 BY MR. BORG:

8 Q Mr. Salvato, you have testified that you know
9 Louis Santos since 1973?

10 A Yes.

11 Q Do you know a Benny Rosado? Yes or no.

12 A No.

13 Q How often did you see Louis Santos between
14 the time you first met him in 1973 until this year?

15 A An average of maybe three times a month, four
16 times a month.

17 Q And in 1973 and until the middle of 1974, how
18 often did you see Louis Santos?

19 A Until the middle of 1974?

20 Q Yes.

21 A A couple of times a month.

22 Q Did you ever see Benny Rosado in the company
23 of Louis Santos?

24 A No.

25 Q Do you know who he is?

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1 mmhh 2 Salvato-cross

2 A I was told --

3 THE COURT: Do you know? You know Mr. Carey?

4 THE WITNESS: Yes.

5 THE COURT: Do you know Benny Rosado?

6 THE WITNESS: No.

7 Q Did you ever hear the term Spanish Benny?

8 A Yes.

9 THE COURT: Did you ever meet Spanish Benny?

10 THE WITNESS: No.

11 Q Did you have narcotic transactions, illegal
12 narcotic transactions, between yourself and Tony Finn?

13 A Yes.

14 Q How many times?

15 A Twice.

16 Q Did there come a time that you knew that you
17 would be charged with crimes that Tony Finn made with you--
18 withdrawn.

19 Did there come a time that you knew you would
20 be charged with narcotic crimes that you conducted with
21 Anthony Finn?

22 A Yes.

23 Q And when was that?

24 A After the arrest of Philly Lubrano, John Rizzo
25 and Victor Vitale.

53A

mmhh 3 Salvato-cross

Q You knew they were arrested and charged because of their dealings with Anthony Finn?

A Yes.

Q You knew you were going to be charged as well?

A Yes.

Q When was that?

A After Tony Finn's death.

Q When was that?

A About a couple of weeks to a month after his death.

Q Are you sure you didn't know it, know of it before his death?

A That what?

Q That you would be charged.

A I would not know. How was I to?

Q I am asking you. Did you know?

A No.

Q With whom were you sold or transacted narcotic business with Finn?

A Sammy Pontillo.

Q Were you in a car when Finn was shot at?

A No.

Q Were you ever told by Finn that he was shot at?

A No.

Q You testified before that two weeks prior to

54A

1 March 4 Salvato-cross

2 Finn's death you spoke to Louis Santos?

3 A Yes.

4 Q Did Thomas Petito's name arise?

5 A Yes.

6 Q Were you told at that time that Finn was an
7 informer?

8 A That they thought he was an informer.

9 Q Were you aware that Finn was an informer at
10 that time?

11 A Just on rumor.

12 Q On March 4, 1977, where were you around 10 o'clock
13 at night?

14 A 1977.

15 Q Excuse me, 1974.

16 A I was either in Separate Tables or possibly Rub's.

17 Q Whom were you with at Separate Tables?

18 A I was by myself until I walked in.

19 Q Did you see anybody there?

20 A There was Louis, Chino, a woman and another
21 guy that I was introduced to that I don't remember who it is.

22 Q Have you been shown many pictures by Mr. Carey?

23 A No.

24 Q Since you decided to turn government informer
25 have you seen any pictures in Mr. Carey's office?

55A

1 mmhh 5 Salvato-cross

2 A Only the ones I seen this morning.

3 Q This conversation you had with Mr. Santos at
4 Separate Tables that evening, was there conversation
5 concerning money that Finn owed Santos?

6 A Yes, there was discussion of money, that he
7 owed Santos money.

8 Q Did Santos say, "He owes me \$2,500"?

9 A Yes.

10 Q Who was Chino with?

11 A With his wife.

12 Q Was he sitting at the same table as you were?

13 A We were not sitting at a table.

14 Q Were you standing at a bar?

15 A Standing by the bar.

16 Q How many drinks did you have?

17 A One or two.

18 Q Had you been to a bar prior to Separate Tables?

19 A No.

20 Q Was this conversation between you and Santos
21 participated in by anybody else?

22 A This other person that I can't remember who it is
23 that I was introduced to.

24 Q You can't remember or you don't want to remember?

25 A I just don't remember who it is.

56A

1 mmhh 6 Salvato-cross

2 Q How long did you remain at Separate Tables?

3 A Maybe an hour; 45 minutes.

4 Q Where did you go next?

5 A To Ruby's.

6 Q Who did you see there?

7 A Tony Finn and Murray Schneider.

r2 8 Q Did you have a discussion with Tony Finn?

9 A Concerning what?

10 Q Did you have a conversation?

11 A I talked to him.

12 Q What did you say?

13 A Just general discussion.

14 Q What was the general discussion?

15 A What happened? What are you doing? You know,
16 just have a few drinks, and then after I said, "Come on,
17 let's go downtown."

18 Q Downtown, meaning where?

19 A Any place downtown, just to leave the bar.

20 Q Was there any reason?

21 A No.

22 Q Didn't Santos tell you that he wanted to speak
23 to Finn?

24 A Yes.

25 Q Wasn't the reason that you asked Finn to leave,

57A

mmhh 7

Salvato-cross

to meet Santos?

A It was one of the reasons to go downtown.

Q Was that one of the purposes for you to go downtown?

A It was one of the purposes.

Q Did Murray Schneider go along with you?

A I don't remember if he left Ruby's with us, but I remember him being at the social club with us.

Q Was he at Ruby's?

A I think so.

Q Did he go with you to the social club?

A I don't know if he left in the same car with us or he brought his own car there, but we, all three of us, were at the social club together.

Q At Ruby's did you have anything to drink?

A I had a couple of drinks.

Q This was after the couple of drinks at Separate Tables?

A Yes.

Q Now, when you went to the social club did you have a few more drinks?

A Yes.

Q How long a period of time elapsed between the time you entered Separate Tables until the time you stayed

58A

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Salvato-cross

at the social club?

THE COURT: Until the time you stayed or left?

Q -- left the social club?

A Three and a half hours.

Q What did you say, if anything, to Finn at the social club?

A I told Finn and Murray Schneider if they wanted to go to they Alley Cat for a drink, and I told Finn Santos wanted to speak to him about the money he owed him.

Q Is that what you told him?

A Yes.

Q Was there another conversation at Ruby's?

A I don't recollect.

THE COURT: You mean with them or in the bar generally?

Q Were you at Ruby's?

A No, I walked into Ruby's by myself.

Q Was a person by the name of Mooney or Money at Ruby's?

A I don't remember.

Q Do you know who I am talking about?

A I know a Mooney, but I don't know a Money.

Q Was this gentleman called Mooney at Ruby's that evening?

59A

- 1 mmhh 9 Salvato-cross
- 2 A It could be.
- 3 Q Do you know what he looks like?
- 4 A I know one Mooney, what he looks like.
- 5 Q Well, that Mooney that you know, was he at
- 6 Ruby's?
- 7 A I don't recollect if he was there that night.
- 8 Q When you arrived at the Alley Cat did you have
- 9 a few drinks there?
- 10 A I don't even think we had a chance to have a drink.
- 11 Q What time did you arrive there?
- 12 A Maybe about 1 o'clock.
- 13 Q What did you do when you arrived?
- 14 A We walked in. Louis called Tony Finn over and
- 15 argued.
- 16 Q One second --
- 17 MR. CAREY: Objection, your Honor.
- 18 Q Did you see Patty Houston --
- 19 THE COURT: He has not finished his answer.
- 20 Q What did you do?
- 21 A We walked in. When we walked in Louis Santos
- 22 called Tony Finn over and an argument erupted between them.
- 23 Q Did you see a Patty Houston on the premises?
- 24 A I really can't say.
- 25 Q Do you know a Patty Houston?

60A

- 1 mmhh 10 Salvato-cross
- 2 A No, I don't think so.
- 3 Q Did you ever hear of a Patty Houston?
- 4 A I have heard of him.
- 5 Q Do you know what he looked like at that time?
- 6 A No.
- 7 Q Did you know what a Benjamin Rosado looked like
- 8 at that time?
- 9 A No.
- 10 Q When Louis and Finn had the argument, where
- 11 were you standing?
- 12 A Approximately? Maybe ten feet away.
- 13 Q Were you at the bar or at the table?
- 14 A At the bar.
- 15 Q What?
- 16 A By the bar.
- 17 Q Were you standing up or seated?
- 18 A Standing up.
- 19 Q Was there anyone else at the bar?
- 20 A There were a few people at the bar.
- 21 Q Did you know them by name?
- 22 A Some of them.
- 23 Q Who are they?
- 24 A Chino, his wife, Louis, Sally, Carl, Philly and
- 25 a couple of other people that were in the bar.

61A

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Salvato-cross

Q These couple of other people in the bar that you don't recall, have you ever learned the names of those people?

A I think they were neighborhood people. One was a woman that used to drink there all the time. She is a deaf and dumb woman.

Q Did you give this information to the United States Attorney?

A Excuse me?

Q Did you give this information that there was a woman from the neighborhood at the bar that evening?

A Yes.

Q When did you tell them this?

A A couple of days ago.

Q Did you tell them there was another individual, other than the people that you have just described?

A Yes.

Q What was the description of the other person?

A I really don't remember.

Q Was he white? Was he black?

A He was white.

Q Was there a person by the name of Billy Eckstine?

A When I was there he wasn't there.

Q You didn't see him there?

62A

- 1 mmhh 12 Salvato-cross
- 2 A No.
- 3 Q After the argument ensued by Louis Santos and
- 4 Finn, did you do anything?
- 5 A I tried to break it up.
- 6 Q Where was Chino at the time you tried to break
- 7 it up?
- 8 A He was kicking Finn.
- 9 Q Did you ever see him take a swing at Finn?
- 10 A I really couldn't say.
- 11 Q Well, you said when you walked in, almost as
- 12 soon as you walked in, Santos said to Finn, "Hey, come
- 13 over"?
- 14 A Right.
- 15 Q Is that right?
- 16 A Right.
- 17 Q And it was only a few moments later that you
- 18 saw an argument?
- 19 A Right.
- 20 Q Did Chino or John Vasquez come over and take
- 21 a swing at Finn?
- 22 A I really couldn't tell.
- 23 Q Weren't you watching this?
- 24 MR. CAREY: Objection.
- 25 THE COURT: Overruled.

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Q Weren't you watching this?

A I was watching, but their backs were towards me.

Q Did you see Vasquez or Chino approach where Finn and Santos were having an argument?

A Yes, I seen him approach where they were having an argument.

Q Did you see him take a swing at him?

MR. CAREY: Objection. Answered.

THE COURT: He has already answered that.

Q How many people were in the premises, other than the individuals you have described?

A Maybe a couple of others.

Q Other than the man and woman at the bar, you are now saying there were a couple of others?

A There may have been a couple of others. The bar was dim and this happened in a matter of moments.

Q Was it so dim that you couldn't see what happened?

A No, it was not that dim.

Q Was it as well lit to be able to notice other people there?

A Yes.

Q Did they walk toward the immediate area where Santos and Finn were having their argument?

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A No. Everybody just backed up.

Q You walked forward?

A I walked forward.

Q And you tried to separate them?

A Yes, because I walked in with him.

Q You didn't see Chino at this time?

A I seen Chino.

Q Was he swinging at him?

A Yes, when he was down he was kicking him.

Q How long did the scuffle take?

A A couple of minutes.

Q Did you separate them?

A I tried to.

Q Did you?

A No.

Q Did you participate in the beating of Finn?

A No.

Q Did you take a swing at him?

A No.

Q Did Finn stand up after it was all over?

A He was carried over to the chair.

Q Did you help carry him?

A No.

Q Who carried him?

65A

1 mmhh

Salvato-cross

990

2 A I think Sally and Chino.

3 Q I don't want to interrupt you.

4 A I just remember, them two.

5 Q Well, after Sally and Chino carried him over
6 to a chair, where did they place him?

7 A They sat him in the chair.

8 Q Was it near the bar? Was it at the far end of
9 the place?

10 A It was by the office.

11 Q And where is the office located?

12 A Directly across the bar, the end of the bar.

13 Q Is that at the furthestmost portion of the bar area?

14 A It is the back of the bar, towards the back of
15 the bar from the entrance.

16 Q Is that near the area away from where the tables
17 are situated?

18 A There were two tables on both sides of the office.

19 Q Was there a curtain hanging over the office?

20 A I don't remember.

21 Q By the way, had you ever been down to the basement
22 of the Alley-Cat?

23 A Never.

24 Q When you were attempting to bring this up, I
25 believe it was then you said that Louis pulled out a .45?

66A

1 mmhh
2 A No, when the struggle was on Louis pulled out
3 the .45.

4 Q Was the struggle between Santos and Finn and
5 Chino?

6 A I think so.

7 Q And you were ten feet away?

8 A Right.

9 Q When you were ten feet away and seeing Finn, Chino
10 and Santos, it was at that time you could see a .45 being
11 pulled?

12 A And fired, yes.

13 Q Who fired it?

14 A Louis.

15 Q In which direction?

16 A Toward Finn.

17 Q Wasn't he scuffling with him?

18 A Yes.

19 Q As he was scuffling with him with his hands he
20 pulled out a .45 and took a shot at him?

21 A Yes.

22 Q This was at very close range?

23 A Yes.

24 Q He could not have been more than a foot or two
25 away?

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Salvato-cross

992

A A couple of feet away.

Q And he fired at his direction?

A Yes.

Q Did you see Finn fall to the ground?

A Yes.

Q Did you see him shot?

A I don't know if he was shot or not.

Q Did you go over to Finn after he was in the
chair and talk to him?

A No.

Q Did you notice if he was bleeding?

A No.

Q Well, you had come in with him, hadn't you?

A Yes.

Q Weren't you interested?

A Yes, I was.

Q Did you go over there?

A No.

Q Did you ever see blood coming from the side of
Finn's head?

A No.

Q Did you ever see any of his eyes puffed up?

A No.

Q Was Finn dead?

68A

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Salvato-cross

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A Not at that time.

3

Q Was he seated?

4

A Yes.

5

Q Could you tell if he was alive or not?

6

A He was moving from the chair.

7

Q Was he slouched over the table?

8

A No, he was slouched back.

9

Q Could you tell if he was breathing?

10

A It looked like he was breathing.

11

Q What was he doing?

12

THE COURT: He was moving. He has already told

13

you that.

14

Q What was moving about him? The head? The hands?

15

A The whole body was moving.

16

Q After the shot went off did you attempt to

17

break it up?

18

A Yes.

19

Q And it was at that time, after the shot, that

20

you went over to try to assist Finn?

21

A Right.

22

Q Did you pick him up?

23

A No. That is when Sally pointed the .357 at me

24

and told me to mind my own business.

25

Q The .357 is what?

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Salvato-cross

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A A magnum.

Q Do you know who was wearing the .357 magnum
that night?

A Yes.

Q Who?

A Tony Finn.

Q Did Sally enter the scuffle?

A I couldn't really say.

Q Well, you were standing ten feet away.

A But there was a lot of confusion going on.

Q Were there people milling in and around?

A Yes.

Q You were at the bar area? Correct?

A Yes.

Q And the table area was where the scuffle was
going on?

A No, it was right between the table and the bar.

Q And the people milling about were all excited?
Is that right?

A Yes.

Q And they were walking back and forth?

A No, they just jumped back to get out of the way,
some of them.

Q And Sally jumped in?

70A

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A Right.

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Q Did Sally have his own gun?

4

A I don't know.

5

Q Did you see him in possession of a .45 that night?

6

A No. I would have to say no.

7

Q When you heard the shot did you jump back also?

8

A Yes. Then I went over to see to break it up.

9

Q And you succeeded?

10

A No, I didn't succeed.

11

Q Did Sally tell you to move back?

12

A Yes.

13

Q Who put Finn in the chair?

14

A I think it was Louis and Chino, or Sally --

15

one of them did.

16

Q Was Carl Cabrera there?

17

A No.

18

Q Was Philly Felice?

19

A No.

20

Q That you are sure of?

21

A Yes, because I seen them at the corner of the bar.

22

Q There is no doubt in your mind about that?

23

A No.

24

Q At that time when you saw Finn sitting in the

25

chair, was it at that time you left?

1 mmhh

Salvato-cross

996

2 A After I spoke to Louis.

3 Q He told you to leave?

4 A He says, "Everything will be all right. Don't
5 worry about it; just leave."

6 Q Then you left?

7 A And I left.

8 Q You left Finn alone?

9 A Yes.

10 Q Now, you testified that some time afterwards
11 you had a conversation with Louis Santos?

12 A Right.

13 Q At that conversation did he tell you that
14 they were not going to do anything to him?

15 A Yes.

16 Q Was there anyone present in that conversation
17 between you and Santos?

18 A No.

19 Q So there was nobody present at the conversation
20 you had with Louis before at Separate Tables?

21 A Right.

22 Q And there was no one present between you --

23 MR. CAREY: Objection to the characterization
24 that there was no one present with Santos at the time he
25 had a conversation with Mr. Salvato. The testimony is there

72A

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Salvato-cross

997

was a stranger there.

THE COURT: There was a third person there
at Separate Tables.

Q Did the third person participate in the conversation?

A He was overhearing it.

Q Do you know his name?

THE COURT: We have been through this twice.

A I am not sure.

Q You testified also that Santos told you a few
months ago that there are no witnesses in this case?

A Right.

Q And nobody saw it happen?

A Right.

Q Mr. Salvato, you never went to jail, did you,
except in the last few years?

A I was in jail in 1967.

Q Did you serve any prison time?

A Eight months.

Q What was that for?

A Illegal entry.

Q And you were apparently serving a narcotics sentence?

A Yes.

Q How much time were you sentenced?

A 1 to 5.

73A

Q When you were arrested on this charge you knew, did you not, that the first count of the indictment could potentially give a large sentence? Correct?

A Of this count here? This charge?

Q The first count, the violation of Finn's civil rights.

A Yes.

Q Were you aware that you could face imprisonment for life?

A Yes.

Q You already testified, did you not, on direct examination that one of the reasons you turned is you didn't want to spend the rest of your life in jail?

A Yes.

Q That was a pretty strong inducement, wasn't it?

A Yes.

Q And you knew when you took a plea that the most you could ever get was five years?

A Yes.

Q Did you also know that the five-year maximum that you face on your plea would run along with the other five-year sentence?

A No.

MR. CAREY: Objection.

74A

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Salvato-cross

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THE COURT: Sustained.

Q When you became a defendant in this case charging you with Finn's murder, it was afterwards, was it not, that you found out you were a suspect in four other narcotics charges?

A Four other narcotics charges, no.

Q I show you these two sheets of paper, Defendant Santos Exhibit D, I think it is --

(Defendant Santos Exhibit D marked for identification.)

A I knew this one here.

Q I am just asking you, did you ever see that paper before?

A Yes.

MR. CAREY: May I see that?

Q I show you Exhibit D and ask you to look at it and ask you when for the first time did you see that or see a copy of it.

MR. CAREY: Objection. It is irrelevant.

THE COURT: Overruled.

A When is the first time I saw a copy of this?

Q Yes.

A It was at a lawyer conference.

Q Did your lawyer show it to you?

75A

1
2 A Yes.

3 Was that while you were in prison awaiting trial
4 on charges, the Finn case?

5 A Yes.

6 Q Do you see your name on it?

7 A Yes.

8 Q Were you then made aware that you were a suspect
9 or a target in four other narcotic charges?

10 A Yes.

11 Q You had not agreed to become an informer up to
12 that time; had you?

13 A No.

14 Q Now, after seeing your name as a target or
15 suspect on four other narcotic charges, how long did
16 you wait before deciding to become an informer?

17 A That was not the reason I became --

18 Q I'm asking you, how long did you wait?

19 A Three weeks.

20 Q Did you know and was it explained to you that
21 for each one of these narcotic charges you would be sentenced
22 separately to jail if you were acquitted?

23 MR. CAREY: I object to the characterization
24 that there are any charges pending or possibly pending.

25 THE COURT: The fact that a person is a suspect

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Salvato-cross

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does not mean that he can be indicted or convicted.

MR. BORG: It goes to state of mind.

THE COURT: I sustain the objection, in any event.
The mere fact that you are a suspect does not mean you
are facing that.

Q You were aware that you were a suspect in your
own mind?

A Yes.

Q Is it also correct to state that you had
become very nervous about it?

A Not about that.

Q You became nervous about going to jail the
rest of your life?

A Yes.

Q You were not worried about being convicted
on separate narcotics charges?

A Not at the time.

Q Did you have discussions with any members
of your family which convinced you to turn government in-
former?

A I had a discussion with my wife.

Q When was that?

A A week previous.

Q Had you been nervous the few weeks before that?

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A Definitely.

Q Were you so nervous that you were going to see the doctor in jail?

A Yes.

Q Did he prescribe medication?

A She did.

Q What medication?

A Valium and sleeping tablets.

Q Are you having trouble sleeping?

A Yes.

Q Did the Valium calm you down?

A Yes.

Q Did you take potent amounts of Valium?

MR. CAREY: Objection.

THE COURT: I don't know what potent means.

Q Are you still on medication?

A Yes.

Q When was the last time you took a Valium?

A Last night.

Q When was the last time you took a sleeping pill?

A Two weeks ago.

Q Does the Valium act as a relaxant?

A Yes.

Q Do you intend to take a Valium tonight?

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2 MR. CAREY: Objection.

3 THE COURT: Sustained.

4 Q Are you nervous now?

5 A Yes.

6 Q Do you still consider yourself a friend of
7 Louis Santos?

8 A I don't think we are friends any more.

9 Q Did you make an agreement with the government
10 to testify to what they wanted to hear?

11 A No.

12 Q As one of the inducements to get you to turn
13 a witness did they offer to pay you or your wife money?

14 A Just help with going to take care of my wife
15 while I was in jail.

16 Q Taking care meant to put them in a house and pay
17 the rent?

18 A Yes.

19 Q And giving them money for food?

20 A Yes.

21 Q You were in jail at this time and unable to work?

22 A Yes.

23 Q Who was supporting your wife and family?

24 A Welfare.

25 Q To your knowledge is the government going to put

1 mmhh

Salvato-cross

1004

2 you in better quarters or your wife or children in better
3 quarters?

4 THE COURT: Put him in better quarters?

5 He is in jail.

6 Q To your knowledge is the government going to
7 provide your wife and children with better quarters than
8 where they are living?

9 A I don't think that is easy.

10 Q You have no knowledge of that?

11 A No.

12 Q Would it be correct o say that one of the
13 reasons you are turning government informer is to save your
14 own skin?

15 A Yes.

16 Q That is the strongest inducement?

17 A Yes.

18 Q Is it also correct to state that you would say
19 anything in order to save yourself?

20 A No.

21 MR. BORG: I have nothing else.

22 THE COURT: Mr. Stalonas.

23 MR. STALONAS: I am listening.

24 THE COURT: It didn't look that way.

25 THE WITNESS: May I have some more witness?

80 A

THE COURT: Water for the witness.

CROSS-EXAMINATION

BY MR. STALONAS:

Q A couple of questions, Mr. Salvato.

You say you have none Joe Pecorino for about
20 years?

A Yes.

Q Would it be fair to say back in 1974 about the
time this thing happened he was a regular at that bar?

A Who? Me?

Q No, Joe Pecorino was a regular at that bar.

A Yes.

Q Mr. Carey asked you a question how many times
did you meet Mr. Pecorino or did you see Mr. Pecorino. Did
you mean by that every time you would go to the Alley Cat
usually you would see Joe Pecorino?

A Yes.

Q You would not go there specifically to see him;
he was just a guy having drinks at the bar, hanging out there?

A Yes.

Q Now, it has been your testimony that on the
night that Mr. Finn met his demise Joe Pecorino was not
at the bar? Is that correct?

A That is correct.

mmhh

Salvato-cross

1006

Q You know him well? You know what he looks like?

A Yes.

Q You mentioned at Separate Tables there was a man there who you say was a stranger?

A Right.

Q And he was in a group that you were talking with at that time?

A I was talking to Louis and the stranger was in between me and Louis.

Q Did he appear to be in the group with Louis?

A Yes.

Q Just so the record is clear and the jury is clear, you have identified a picture of Mr. Scudiero? Is that right?

A Yes.

T3

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Salvato-cross

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Q And that man you call a stranger was not

3

Mr. Scudiero?

4

A No.

5

Q You identified a picture of Johnny Vasquez,

6

Chino, and that man you call a stranger was not Johnny

7

Vasquez, or Chino?

8

A No.

9

Q You mentioned when you first came into the

10

Alley Cat later that night there were some people there

11

other than the ones you have identified, there were

12

some people that you didn't know who they were?

13

A Right.

14

Q And it was dark in that bar, is that cor-

15

rect?

16

A Not dark. It was --

17

Q Dim?

18

A Dim.

19

Q Dimly lit?

20

A Right.

21

Q Can you tell us with certainty that that

22

stranger that you referred to at Sepret Tables was not at

23

the bar, the bar at the Alley Cat, when you were at

24

the Alley Cat? Can you tell us that for sure?

25

A Can you repeat that?

83A

bsa2

Salvato-cross

Q It's probably bad form. I will withdraw it.

The man who you referred to as a stranger at Sepret Tables --

A Yes.

Q -- can you tell us with certainty that he wasnot one of the people you didn't know when you arrived at the Alley Cat?

A What do you mean? In other words, if he was the same guy that was there?

Q Is it possible -- withdrawn. There were some people at the Alley Cat when you got there that you didn't know?

A Right.

Q And as you sit here now and try to remember, is it possible that one of the people you didn't know at the Alley Cat was that same stranger who was up at Sepret Tables?

A It's possible.

Q You have mentioned that in the last couple of months you had a conversation with Louie Santos?

A Right.

Q And you asked Louie Santos what happened?

84A

1 bsa Salvato-cross

2 A Right.

3 Q What happened that night, is that right?

4 A Right. Yes.

5 Q And you have also told us that you had a
6 conversation with Mr. Felice and asked him what happened
7 that night?

8 A Yes.

9 Q Did you ever ask Joe Pecorino what happened
10 that night?

11 A Yes.

12 Q What did he tell you?

13 MR. CAREY: Objection.

14 THE COURT: What did Pecorino tell him?

15 MR. STALONAS: Yes.

16 THE COURT: I will let it in.

17 MR. CAREY: Objection, your Honor. May
18 we have a side bar?

19 THE COURT: No.

20 MR. CAREY: May we have a side bar?

21 It's --

22 THE COURT: No.

23 MR. CAREY: The ground is self-serving
24 hearsay.

25 THE COURT: Go ahead. Proceed.

85A

bsa4

Salvato-cross

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Q What did he tell you?

A That he wasn't there, that he was in the hospital.

Q And when you asked the other people -- withdrawn.

When you asked Louie Santos about what happened, were you told that --

MR. CAREY: Objection.

Q -- were you told --

THE COURT: Ask him what he was told.

Q -- were you told that Mr. Pecorino --

MR. CAREY: Objection.

THE COURT: Overruled.

Q -- were you told that Mr. Pecorino wasn't there?

MR. CAREY: Objection. Your Honor, I move to strike both the questions and answers to these questions.

THE COURT: Overruled.

Q You can answer.

A Would you repeat it?

(Record read.)

A By Louie Santos?

Q Yes.

86A

bsa5

Salvato-cross

A Yes.

MR. CAREY: I object and move to strike all the answers as self-searing hearsay.

THE COURT: Overruled.

MR. CAREY: Double hearsay.

THE COURT: He's just getting the full conversation.

You asked him about his conversation with Santos.

MR. CAREY: I asked him about admissions.

THE COURT: I have ruled on it.

MR. STALONAS: No further questions.

THE COURT: You may step down.

MR. CAREY: I have some questions.

REDIRECT EXAMINATION

BY MR. CAREY:

Q Did you ever see Joseph Pecorino in the hospital on the night of Tony Finn's death?

A No.

THE COURT: Were you in the hospital on the night of Tony Finn's death?

THE WITNESS: No, your Honor.

Q Do you know whether it's possible to walk out of the hospital, Mr. Salvato, that Mr. Pecorino was

87A

bsa6

Salvato-redirect

in.

MR. STALONAS: Objection.

THE COURT: Sustained.

Q Did you ever have a conversation with Mr. Louie Santos about whether or not you had ever been introduced to a Benny Rosado by him?

A Yes.

Q Would you please tell the jury what Mr. Santos told you about Benny Rosado?

MR. FRIEDMAN: When, your Honor?

THE COURT: Yes.

Q When did you have the conversation?

A A couple of months ago.

Q Who, if anyone else, was present during that conversation?

A Nobody.

Q What did Mr. Santos tell you at that time about Benny Rosado?

A He says, "Yeah, I might have" --

MR. STALONAS: Objection.

THE COURT: Overruled.

Q Would you please proceed and tell the jury.

A He says, "Yes, I might have met him on an occasion."

88A

bsa7

Salvato-direct

1 Q If you were to be sentenced on the plea
2
3 to which you have taken to the charge of obstruction
4 of justice, can that sentence be added to the present
5 time you are serving?

6 A Yes.

7 Q Did the government approach you and ask
8 you to cooperate with the government?

9 A No.

10 Q How did your cooperation come to the atten-
11 tion of the government?

12 A I asked my lawyer to get in touch with you.

13 MR. CAREY: I have no further ques-
14 tions of this witness, your Honor.

15 THE COURT: You may step down.

16 (Witness excused.)

17 THE COURT: Next witness.

18 MR. CAREY: Your Honor, the government
19 calls Raymond Rivera.

20 R A M O N D R I V E R A, called as a witness
21 by the government, being first duly sworn,
22 testified as follows:

23 DIRECT EXAMINATION

24 BY MR. PATTERSON:

25 Q Mr. Rivera, between 1971 and 1973 where were

1 mmhh 11

Ianuzzi-direct

2 instructed that this is the defendant Pecorino's witness.

3 THE COURT: Yes.

4 (In open court.)

5
6 J O H N N I C H O L A S I A N U Z Z I, called
7 as a witness on behalf of the defendant Pecorino,
8 being first duly sworn, testified as follows:

9 MR. CAREY: Your Honor, may we have an offer
10 of proof?

11 THE COURT: Overruled.

12 DIRECT EXAMINATION

13 BY MR. BORG:

14 Q What is your occupation or profession, Mr.
15 Ianuzzi?

16 A I am an attorney.

17 Q Did you have occasion within the last month
18 to have a conversation with one, Joseph Salvato, otherwise
19 known as Junior?

20 A Yes.

21 MR. CAREY: May we have a side bar, your Honor?

22 THE COURT: Yes.

23 (At the side bar)

24 MR. CAREY: I would like to know what this
25 witness is being offered for.

90 A

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2 MR. BORG: The same offer of proof that the Judge
3 declined. Mr. Ianuzzi will testify that Mr. Salvato
4 called him several times in the last few weeks while he
5 was a prisoner at Metropolitan Correction Center and that
6 during the course of such conversations he informed Mr.
7 Ianuzzi that he, Salvato, was never at the Alley Cat that
8 night, and it was not a privilege conversation.

9 MR. CAREY: That is the question I have.

10 MR. BORG: I will go into that. He was not
11 representing Mr. Salvato, certainly not in the last few
12 weeks.

13 MR. CAREY: The question is not whether he
14 had been paid or retained, but whether or not Mr. Salvato
15 was talking to him in a context Mr. Salvato considered
16 to be a privileged conversation.

17 MR. BORG: Mr. Ianuzzi declined to talk to me
18 until he felt that it was not a privileged conversation.

19 THE COURT: But that is not his decision; that
20 is Mr. Salvato's decision. An objection is made and sustained.
21 You got to get Salvato to agree, not this witness; he is
22 not the determining factor.

23 MR. BORG: May I have a few more questions on that
24 line?

25 THE COURT: No, of course not. I won't take

1 mmhh 13

Ianuzzi-direct

2 anything he says about that relationship. It is Salvato.
3 He appeared before me representing Salvato at one time.

4 MR. BORG: I know.

5 THE COURT: I sustain the objection.

6 MR. BORG: In that case may we ask the United
7 States Attorney to bring Salvato in?

8 THE COURT: Yes, bring him back.

9 MR. CAREY: Well, he cannot get here earlier
10 than this afternoon if I make the order right now.

11 THE COURT: Make the order.

12 MR. BORG: As long as Mr. Carey is calling
13 Mr. Salvato, I am asking he also call a Mr. Anthony
14 DiLorenzo, who is also an inmate at MCC. We tried to
15 subpoena him for today and they will not honor it, unless
16 the Court or Mr. Carey calls on the marshal to produce him.
17 They will produce him within an hour.

18 MR. CAREY: I take it he is not an alibi witness.

19 MR. BORG: No.

20 THE COURT: He is going to testify as to what he
21 was told by Salvato in jail?

22 MR. BORG: The telephone number is 791-1111.

23 MR. CAREY: Anthony DiLorenzo.

24 THE COURT: You better bring two guards with him.
25 The last time they brought a fellow over here, the trial

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mmhh 14 Ianuzzi-direct

was used as a method to get the man out of here.

Anything else?

MR.BORG: That is all I am asking. I didn't know that.

MR. STALONAS: May we have a brief recess, because one of the witnesses arrived since we started and I have not had a chance to talk to her.

THE COURT: Well, let us get Mr. Ianuzzi off the stand and I will call a morning recess.

MR. STALONAS: Thank you.

(In open court)

THE COURT: You may step down, Mr. Ianuzzi.

(Witness excused)

THE COURT: We will have a morning recess.

(Recess)

mmhh 1

Salvato-direct

T5 pm 2

(Jury not in box)

MR. BORG: I am not going to put on the witness that I had requested. I will, therefore, now ask for a question and answer session of Mr. Salvato to determine whether or not the privilege occurred outside the presence of the jury. If the Court rules there was no privilege, then we will call Mr. Ianuzzi.

THE COURT: All right, bring Mr. Salvato out.

J O S E P H A. S A L V A T O, recalled.

THE CLERK: The Court wishes you to know that you are still under oath, Mr. Salvato.

DIRECT EXAMINATION

BY MR. BORG:

Q Mr. Salvato, were you sworn in, sir?

A Yes.

THE COURT: He was told that he is still under oath. He was not separately sworn in.

Q After you were arrested on this charge did you retain the services of any attorney?

A No.

Q From the time you were arraigned and entered a plea in this court to the indictment, did you have the services of a Mr. Daniel Meyer as your attorney?

1 mmhh 2 Salvato-direct

2 A Yes.

3 Q Was he your attorney throughout the entire
4 period of this case alone?

5 A Not alone.

6 Q Did you retain the services of another attorney?

7 A On a friendship basis.

8 Q Who is that other attorney on a friendship basis?

9 A John Ianuzzi.

10 Q Prior to your arrest in this case had you socialized
11 with Mr. Ianuzzi?

12 A Yes.

13 Q And you had a friendship, aside from his being
14 your attorney?

15 A Yes.

16 Q During the social occasions would you go out
17 to dinner with him?

18 A Yes.

19 Q Did you discuss other matters, other than
20 personal affairs?

21 A I don't remember if I did or if I didn't. I
22 went to dinner with him while I was waiting trial on
23 a case I am now.

24 Q Did you have other discussions, other than
25 the particulars of the case you are doing jail time for?

1 mmhh 3 Salvato-direct

2 A General discussion.

3 Q Did you pay for his services on that case?

4 A Yes.

5 Q Did you consult with Mr. Meyer on this case
6 from time to time on an attorney-client relationship?

7 A I don't know what you mean.

8 Q On this case?

9 A Yes?

10 Q Meaning the civil rights charge?

11 A Right.

12 Q That you were indicted for, did you have
13 discussions between yourself and Mr. Meyer with him
14 acting as your attorney on the case?

15 A With Mr. Meyers act. ing?

16 Q Yes.

17 A Yes.

18 Q To your knowledge did anybody retain the services,
19 aside from Mr. Meyer, of another attorney?

20 A For me?

21 Q Yes.

22 A No.

23 Q Did you have discussions with Mr. Ianuzzi
24 after you were arraigned on this case?

25 A Yes.

1 mmhh 4 Salvato-direct

2 Q Did you discuss other matters, other than this
3 case?

4 A Other matters except for this case?

5 Q Other matters, other than this case?

6 A I couldn't say.

7 Q Did you discuss the facts of this case?

8 THE WITNESS: Your Honor --

9 THE COURT: He wants to know whether you spoke
10 to Mr. Ianuzzi since your arraignment on this case. You
11 know what an arraignment is?

12 THE WITNESS: Yes.

13 THE COURT: About the facts of this case?

14 THE WITNESS: Yes.

15 Q And after Mr. Meyer was provided to you as your
16 attorney, did you have other discussions, other than the
17 arraignment, with Mr. Ianuzzi?

18 A Yes.

19 Q How often and how many times?

20 A Maybe a total of three or four times personally.

21 Q You mean where he personally came to visit you?

22 A Yes.

23 Q Did you discuss the facts of this case with him?

24 A Yes, some of the facts.

25 Q Was anybody else present during the discussion

mmhh 5 Salvato-direct

you had with Mr. Ianuzzi?

A A couple of them I think Louis Santos was and a couple I was by myself.

Q And at the time that you had discussions with Mr. Ianuzzi with Mr. Santos present, did you discuss the facts of the case?

A Very lightly.

Q And were there other occasions that you called Mr. Ianuzzi by telephone from jail?

A Yes.

Q Did you have other discussions with him?

A Yes.

THE COURT: Regarding--

Q Regarding the facts of this case.

A Not directly the facts of the case, just what was happening at the time.

Q Were they in the nature of filling him in on what occurred? On the pendency of the case?

A Yes.

Q Did you have discussions with a Mr. Addonizio about the facts of this case?

A He was my investigator, yes.

Q Did you have discussions with Mr. Addonizio with Mr. Ianuzzi present?

Salvato-direct

cross

1 mmhh
2 A I think we did e s, yes.

3 MR. BORG: At this point I am urging the Court --

4 THE COURT: Wait a second. Don't you think
5 Mr. Carey should have a chance to cross-examine him?
6 I know Mr. Ianuzzi appeared before me saying he might
7 represent Salvato. You were not there.

8 MR. BORG: Judge, I think I was.

9 THE COURT: You were not. You said it was raining
10 out and you didn't show up. Do you want me to read my notes
11 to you?

12 MR. BORG: No.

13 THE COURT: Go ahead, Mr. Carey. You may
14 cross-examine.

15 CROSS-EXAMINATION

16 BY MR. CAREY:

17 Q Mr. Salvato, when you spoke to Mr. Iannuzzi after
18 your arraignment in the case, in your opinion were you
19 speaking to him for the purpose of obtaining legal advice?

20 A Yes.

21 Q Where did you have those conversations with
22 Mr. Ianuzzi?

23 A In the MCC.

24 Q Did you ask that Mr. Ianuzzi come to visit you
25 at the MCC?

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1
2 A Yes.

3 Q At the time you asked him to come and visit you
4 did you ask him to visit you for the purpose of obtaining
5 from him legal advice about the case?

6 A Yes.

7 Q When you discussed the facts about your ase with
8 him did you do that in order to enable Mr. Ianuzzi to be
9 able to give you legal advice?

10 A Yes.

11 Q When Mr. Addonizio was present at the meeting
12 between yourself and Mr. Ianuzzi, was Mr. Addonizio acting
13 at that time on your behalf in preparing your anticipated
14 defense to the charges you were arrested on?

15 A I think at the time there was a problem whether
16 he was assigned to me or not from the court.

17 THE COURT: Whether Mr. Ianuzzi was assigned to you?

18 THE WITNESS: Mr. Addonizio.

19 Q Aside from the technical aspect of Mr. Addonizio
20 and whether or not he was assigned to represent you or
21 someone else at that time, nevertheless, did you consider
22 in your mind that Mr. Addonizio's presence was necessary
23 in order to discuss fully the assistance which you were
24 seeking from Mr. Ianuzzi? Do you understand my question?

25 A No, you are confusing me a little.

1 mmhh 8

Salvato-cross

2 Q At the time you spoke to Mr. Ianuzzi alone,
3 did you consider that what you told him would be kept
4 by him in confidence?

5 A Yes.

6 Q At the time you spoke to Mr. Ianuzzi in the
7 presence of Mr. Addonizio did you expect that Mr. Ianuzzi
8 would keep those matters in confidence?

9 A Yes.

10 Q At the time you spoke to Mr. Ianuzzi in the
11 presence of Mr. Santos did you expect that Mr. Ianuzzi
12 would keep the matters you mentioned done in confidence?

13 A Yes.

14 MR. CAREY: I have no further questions, your
15 Honor.

16 THE COURT: I have only one problem. We will
17 have a short recess. I have no doubt that any conversations
18 between Mr. Salvato and Mr. Ianuzzi alone are subject
19 to the privilege. I have no doubt that any conversations
20 Mr. Salvato had with Mr. Ianuzzi with the court appointed
21 investigator are subject to the privilege. My only problem
22 is Mr. Santos. We will have a ten-minute recess.

23 (Recess)

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25

(In the robing room.)

MR. CAREY: Your Honor, it occurred to me that it may assist us all in determining the answer to the question of whether Mr. Salvato's statements to Mr. Ianuzzi in the presence of his co-defendant Mr. Santos were privileged or believed by him to be privileged if we determined whether or not at that time Mr. Santos was also discussing matters with Mr. Ianuzzi as his attorney and whether he was seeking from Mr. Ianuzzi at that time legal advice in anticipation of his defense in this particular case.

While I realize that normally a third party who is not assisting the attorney in the conduct of the defense of the person represented by the attorney is an exception to the attorney-client privilege, in this particular case it seems to me that we should inquire whether or not Mr. Santos was seeking legal advice also, and if he were then I think --

THE COURT: How are you going to find that out? You can't ask Mr. Santos to take the stand.

MR. CAREY: No, we can ask Mr. Salvato.

THE COURT: As to what?

MR. CAREY: However, we could ask also

Mr. Ianuzzi, before he were to testify before the jury, what he thought.

MR. BORG: There was also another -- I am just aware of another incident or time that Salvato, Cabrera, Santos and possibly Felice had a joint conference where Mr. Ianuzzi was present, Mr. Meyers was present, as well as Mr. Mirsky, and we can elicit that with two or three questions from Mr. Salvato and at that point it is our position that the privilege would be waived.

THE COURT: Maybe. This is what bothers me. This started out as a joint defense. I think there is no doubt about that in my mind from what I have lived with this case and learned from this case. Consequently, do you say that when the four defendants get together with their four lawyers, that what is said back and forth in that conference is not subject to the privilege simply because it is not one on one? That is what bothers me about it. That is why I asked for a recess, because I want to check that out.

MR. BORG: Mr. Addonizio was present also.

THE COURT: I am sure Mr. Ianuzzi was there. He was there like a blanket that day. He had

three guys, but he didn't know who he was going to represent, but he was going to represent one, and it depends if they have the money, and he admitted that was true, but he was there.

MR. STALONAS: Mr. Borg was present that day.

THE COURT: I thought that is the day he called up and said it was raining.

MR. CAREY: There are two days.

MR. STALONAS: That is the day subsequent to arraignment and we had a bail application. That was March 1st.

MR. CAREY: Your Honor, there is another angle.

THE COURT: Ianuzzi is moving around like he was the blanket. He knew everybody involved and he was going to be in this case.

Now, so far we found out from Salvato that he had used Ianuzzi before, I gather he paid him and still looked upon him as a lawyer even though he couldn't pay him, and I gather that Ianuzzi was perfectly willing to assume that relationship with him, and that is why I say any conversations that Salvato had with Ianuzzi alone are out and any conversations with an

1 hba
2 investigator that I appointed to help counsel defend
3 the case, those are out, and --

4 MR. CAREY: Your Honor, in judging the
5 open question --

6 MR. BORG: Unless there are more people
7 present, which would waive the privilege.

8 THE COURT: You didn't frame it that way.
9 You framed the question Salvato, Ianuzzi, Addonizio.
10 That was your question.

11 MR. CAREY: And Santos.

12 THE COURT: The second one was Salvato,
13 Ianuzzi and Santos. Did you also put Santos in the
14 conversation with Addonizio? I don't recall that.

15 MR. BORG: Ianuzzi, Santos and Salvato.
16 I just learned about the conference with the four
17 attorneys and four defendants also included Addonizio.

18 MR. CAREY: Your Honor, I thought about
19 analyzing it in terms of Messiah. I believe the
20 court would hold that if we were to ask Mr. Salvato,
21 after he began to cooperate, what had occurred during any
22 joint conference in which he participated with other de-
23 fendants and other defense counsel at which the subject
24 of their defense or their defense strategy was discussed,
25 that that would be held certainly a violation of Messiah,

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hba

and I am not going to venture so far as to say Messiah is based on the right to counsel but I believe that must be the foundation of it. I haven't read it in some time.

It therefore seems to me that where there is a joint effort at preparing a defense, that in order to guarantee defendants singly and together effective assistance of counsel, the court must consider that a privileged matter.

I would think that only where it was absolutely clear that because of the presence of certain individuals --

THE COURT: I think the Messiah case was on the basis of dirty pool.

MR. CAREY: Yes, I am sure that that was part of it, but I think because it intimidates or because it was believed to be a possible means of intimidating --

THE COURT: Use by the government. This is not the government.

MR. CAREY: I realize that, your Honor. I am just saying that that is perhaps a way to analyze the situation.

MR. FRIEDMAN: In this circumstance, your

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Honor, it would seem to me that in the interests of justice here you have Mr. Salvato who has pled guilty, and under the new rules apparently the court has a lot of leeway in whether or not to use the privilege.

THE COURT: The privilege simply says -- the new rule says I am to apply the law as to privilege as the federal courts have interpreted the common law.

MR. FRIEDMAN: That's correct.

THE COURT: So that is no leeway. I am still bound by whatever the courts have said the common law was in the federal system.

MR. BORG: But wouldn't Salvato's testimony or testifying in public waive that portion of the privilege where counsel would determine that an injustice might occur such as a blatant false statement? Wouldn't counsel have an obligation to come forward to correct it?

THE COURT: You say that since Salvato has testified he has waived the privilege. That is your point?

MR. BORG: To that portion -- since he has testified and it is our position that a perjurious statement was made before the jury, counsel would have

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an obligation to come forward to correct it, same as a prosecutor.

THE COURT: You are finished, you are finished. Who have you got to testify besides Ianuzzi?

You know you fellows misled me. I was going to spend today and tomorrow finishing this case. You all got up and said you are going to be finished this morning, and we are still horsing around.

You weren't going to put anybody on. Suddenly you put on Felice.

MR. FRIEDMAN: I think I advised the court I was going to take about a half hour on direct. Then of course I had to put Mr. Mirsky on.

THE COURT: You knew you were going to put Ianuzzi on yesterday.

MR. BORG: I put on Mr. Ianuzzi.

THE COURT: How could you have been finished this morning?

MR. BORG: We didn't think the cross examination would take that long.

THE COURT: I want a definite commitment from you. Who do you have besides Mr. Ianuzzi?

MR. BORG: Either Mr. Ianuzzi or Mr. Ad-

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1 hba

2 donizio, depending upon the court's ruling.

3 THE COURT: He is out.

4 MR. BORG: That is all, Judge.

5 THE COURT: Just Ianuzzi?

6 MR. BORG: Yes.

7 THE COURT: How long will he take, his
8 testimony?

9 MR. BORG: Ten minutes.

10 THE COURT: Ten minutes. That completes
11 you?

12 MR. BORG: Yes, Judge.

13 THE COURT: Firm, no doubt?

14 MR. BORG: Yes.

15 THE COURT: What have you got in rebut-
16 tal?

17 MR. CAREY: We have Ms. Howe, who completed
18 the records; we have Agent Luker, who will testify
19 for no more than five minutes on direct, and Edward
20 Matovich.

21 THE COURT: Who is he?

22 MR. CAREY: The daytime bartender at
23 the Alley Cat.

24 THE COURT: How long is he going to be
25 on?

1 hba
2 MR. CAREY: Ten minutes on direct.

3 THE COURT: So your whole thing would be
4 20 minutes on direct. Miss Howe can't take long.

5 I think this is an important enough question
6 for me to check it out a little more clearly than I
7 am now prepared to rule.

8 MR. BORG: May I give an analogy.

9 THE COURT: Wait. What are you arguing
10 for?

11 MR. BORG: I just want to give one more
12 example.

13 THE COURT: We are going to go over to
14 tomorrow morning because there is going to be plenty
15 of time for summations tomorrow. We cannot
16 get to the jury tomorrow as I thought we were going
17 to do. So there is plenty of time. And you are
18 being held to Ianuzzi for 10 minutes

19 You are being held to Matovich for 10,
20 Luker for five and Miss Howe for five.

21 MR. CAREY: Of course, your Honor, depending
22 upon the ruling, we may call Mr. Salvato.

23 THE COURT: How can you?

24 MR. CAREY: Under Rule 613. I assume
25 this is being offered as a prior inconsistent statement.

The Rule 613(b) states:

"Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate him thereon for the interests of justice."

THE COURT: He has already had his opportunity to talk.

MR. CAREY: Not about this statement, your Honor. We didn't ask him what he said in jail.

THE COURT: I assume it is going to be right to show that something he said under oath is untrue.

MR. CAREY: I assume that that is also the case, but he would not have been given an opportunity to explain why he said what he did to his attorney as opposed to what he testified to before the jury.

THE COURT: You mean that this sort of confession in avoidance: "Yes, I did tell Mr. Ianuzzi, I think, but I changed my mind when I took the stand"?

MR. CAREY: Yes.

MR. BORG: This is not so much as a prior inconsistent statement as going to the heart of his knowledge of the case.

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2 THE COURT: It is not a prior inconsistent
3 statement.

4 MR. BORG: This goes to his knowledge.

5 MR. CAREY: I would ask for an offer of
6 some sort.

7 MR. BORG: I thought I gave it this morn-
8 ing on the record.

9 THE COURT: Give it to him again.

10 MR. BORG: That Mr. Ianuzzi will testify
11 that during a conversation had with Mr. Salvato,
12 Salvato told him that he was never in the premises
13 that night.

14 THE COURT: When was that statement made?

15 MR. STALONAS: Your Honor, can I suggest
16 something?

17 THE COURT: Because I have no doubt if
18 it was made to Ianuzzi alone it is not going to come
19 in. I ruled that already.

20 I have also ruled that if he made it to
21 Ianuzzi and Addonizio it doesn't come in.

22 MR. BORG: May we have an opportunity for
23 a few questions on Salvato as to verification of the
24 joint conference.

25 THE COURT: Ask Ianuzzi when it was told

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1 hba

1433

2 now. Is he outside? Go ask him.

3 (Pause.)

4 MR. BORG: He is in his office waiting to
5 come over.

6 THE COURT: Call him on the phone and ask
7 him.

8 (Pause.)

9 MR. BORG: Mr. Ianuzzi was on the phone
10 with me and he indicated to me that the conversations
11 that he had with Salvato regarding Salvato's denial
12 of his being there occurred during the time that he
13 was with Santos, during the joint times and during
14 several times he called him and was there.

15 MR. CAREY: I am sorry?

16 MR. BORG: During several times that he
17 was there at MCC.

18 THE COURT: I could have bet that was
19 going to be the answer.

20 MR. CAREY: Who was present?

21 MR. BORG: Nobody was present at the last
22 one because he saw him alone.

23 THE COURT: He is saying that Ianuzzi is
24 going to take the stand and say that the statement by
25 Salvato that "I was never at the bar that night" was

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made in the presence of Santos.

MR. BORG: That is what he said.

THE COURT: At least.

MR. BORG: Oh, yes, and joint conferences.

THE COURT: And joint conferences.

Stalonas must know about it, Friedman must know about it.

MR. BORG: Meyers, Mirsky, Ianuzzi, three or four of the defendants that were in jail at that time, and phone calls, which I assume the court has ruled privileged as well as the singular visits. That is what he is prepared to testify.

THE COURT: Okay, fellows.

MR. BORG: And he has refused to discuss the case with me prior to this morning.

MR. CAREY: The question is where it was when Mr. Borg went out to speak with Mr. Ianuzzi, I understand.

THE COURT: Mr. Borg called Mr. Ianuzzi on the phone at my suggestion, ably supported by Mr. Stalonas; that he asked Mr. Ianuzzi the circumstances under which this statement was made. He asked him that question and back came Mr. Ianuzzi and said it was made at all times, all possible combinations.

hba

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MR. BORG: Several times.

THE COURT: Okay. Will you fellows excuse me for a few minutes and then we will decide what we are going to do.

MR. BORG: He also indicates that he saw my clients on occasions without my being there but always going up to see Salvato.

THE COURT: That was part of the deal, they were all one big, happy family, and with that I will see you outside.

(In open court; jury not present.)

THE COURT: It is now 25 to 5. I suggest we adjourn until 9:30 tomorrow morning. We will tell the jury to come back at that time. I will have a ruling for you on whether Ianuzzi goes on the stand or not at that time.

MR. BORG: I will ask him to be here at 9:30.

THE COURT: You tell him to be here. We are not going to wait upon his pleasure of showing up. He is directed to be here at 9:30 tomorrow morning. He may or may not be allowed to testify.

MR. BORG: Very good.

(Adjourned to May 18, 1977, at 9:30 a.m.)

WITNESS INDEX

<u>Name</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>REcross</u>
Mary Philomena Rooney	1236	1266	1266	
Felipa Orille	1268	1277		
John Nicholas Ianuzzi	1285			
Chester L. Mirsky	1289	1293		
Gwendolyn Sanders	1296			
Ned Harold Morris	1307	1314	1322	
Ralph Addonizio	1323	1328		
Philip Felice	1331	1352	1411	
Joseph A. Salvato (Recalled)	1414	1419		

EXHIBIT INDEX

<u>Government</u>	<u>Identification</u>	<u>In Evidence</u>
33,33-B		1230
45		1260
<u>Defendant Pecorino</u>		
E		1235
F	1241	1243
G	1244	
H		1344

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UNITED STATES OF AMERICA

3

vs.

4

SALVATORE SCUDIERO, a/k/a
"Sally," et al.

5

6

New York, May 18, 1977,

7

9:30 a.m.

8

9

Trial resumed.

10

--

11

(In open court; jury not present.)

12

THE COURT: Yesterday, in the discussion

13

on the privilege point, Mr. Borg, I think, told me

14

that there were conferences between -- a joint confer-

15

ence, at least, of the following people: Mr. Iannuzzi,

16

Mr. Santos, Mr. Cabrera and Mr. Salvato and Mr. Pecorino,

17

Mr. Mirsky and Mr. Meyers.

18

Is that correct, Mr. Borg?

19

MR. BORG: I can verify that. That is

20

what I did tell the court yesterday.

21

THE COURT: That is what you told me.

22

You were not there and Mr. Stalonas was not there.

23

MR. BORG: That is correct.

24

MR. STALONAS: Mr. Iannuzzi is outside.

25

THE COURT: All right, bring him in.

MR. FRIEDMAN: Pardon me, your Honor.

While we are waiting for Mr. Iannuzzi, may I offer these notes marked as a defendant's exhibit?

THE COURT: No.

MR. FRIEDMAN: May they be marked as a court exhibit?

THE COURT: No. I don't take any handwritten notes given to me 8:30 in the morning when court is starting at 9:30, when I have other things I am doing relating to this case, and stop everything and read them, and I am not reading them now.

Yes, Mr. Iannuzzi, come forth, please.

Mr. Iannuzzi, I am told that you had a conference with the following people jointly: you, Mr. Santos, Mr. Cabrera, Mr. Salvato, Mr. Pecorino, Mr. Mirsky and Mr. Meyers. Is that correct?

MR. IANNUZZI: Yes, sir. Mr. Borg too, sir.

THE COURT: Mr. Borg? Mr. Borg says he wasn't there?

MR. IANNUZZI: I thought he was.

THE COURT: Mr. Borg, were you present?

MR. BORG: I recall one conference with Mr. Iannuzzi. I don't know if the others were there.

I recall one conference with Mr. Iannuzzi.

THE COURT: I am asking specifically about a joint conference because you added that, if you recall yesterday.

MR. BORG: A joint conference, yes.

THE COURT: You originally had the conference between Mr. Iannuzzi and Mr. Salvato?

MR. BORG: That's correct.

THE COURT: You then had a conference or conferences with Mr. Salvato, Mr. Iannuzzi and Mr. Addonizio. I ruled on those and excluded them.

You then told me in the courtroom there was a third conference, Mr. Santos, Mr. Iannuzzi and Mr. Salvato.

MR. BORG: Yes, that is correct.

THE COURT: That was the one we reserved on. We went into the robing room and had further discussion on the record.

MR. BORG: That's correct.

THE COURT: You called Mr. Iannuzzi and came back and added a fourth set of circumstances: joint conference, Mr. Iannuzzi, Mr. Santos, Mr. Cabrera, Mr. Salvato, Mr. Pecorino, Mr. Mirsky and Mr. Meyers. You specifically told me you weren't there,

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2 Mr. Stalonas specifically told me he wasn't there.

3 MR. BORG: I am recalling now that Mr.
4 Iannuzzi mentioned my name. I think I was there in-
5 stead of Mr. Mirsky, but all the others were there, Mr.
6 Meyers was there.

7 THE COURT: You were not there, Mr. Mirsky?

8 MR. MIRSKY: I was trying to bring that
9 to your attention. I was not there. I spoke to
10 Mr. Iannuzzi on one occasion.

11 THE COURT: I am not interested in that,
12 Mr. Mirsky. I am only interested were you at this
13 joint conference?

14 MR. MIRSKY: No, your Honor.

15 THE COURT: But you were there, Mr. Borg?

16 MR. BORG: Yes, that was on 3/14/77,
17 with myself, Mr. Iannuzzi, Mr. Meyers, Salvato, Felice
18 and Santos.

19 THE COURT: Felice too?

20 MR. IANNUZZI: I don't think Cabrera,
21 though, sir.

22 MR. BORG: That was the only joint
23 conference.

24 THE COURT: Repeat it again.

25 MR. BORG: Borg, Iannuzzi, Meyers were

1 hba

2 the attorneys present. Mr. Donnel, who was an investi-
3 gator associated with me, was present, Mr. Felice,
4 Salvato and Santos, on that date.

5 THE COURT: What about Cabrera and Pecorino,
6 which are the names you gave me yesterday, was there
7 a second conference?

8 MR. BORG: I don't have any --

9 THE COURT: You weren't there at any other
10 conference.

11 Mr. Iannuzzi, was there a second conference
12 at which Mr. Borg wasn't present with you, Mr. Mirsky,
13 Cabrera, Salvato, Santos and Pecorino were present?

14 MR. IANNUZZI: I only recall one, sir.

15 THE COURT: You only recall one with all
16 of those people.

17 MR. IANNUZZI All the others I recall
18 too. I have had conferences with Salvato by himself;
19 Salvato and Santos; I have had other conferences with
20 Mr. Mirsky and Cabrera on other occasions.

21 THE COURT: I am not worried about that.
22 I am not talking about that.

23 So therefore if I gather it in joint confer-
24 ences were Iannuzzi, the defendants Santos, Salvato,
25 Felice and defense attorneys Borg and Meyers, right?

MR. BORG: Yes. And I added also that Mr. Donnel was present.

THE COURT: He is a criminal investigator?

MR. BORG: Yes. And Mr. Addonizio also, because I am referring to his notes.

THE COURT: How do you spell Mr. Donnel?

MR. BORG: D-o-n-n-e-l.

THE COURT: I am prepared to rule.

Defendant Santos proposes to offer Mr. Iannuzzi to testify to statements allegedly made by defendant Salvato that he was not present at the Alley Cat on the night in question. These statements were allegedly made either to Mr. Iannuzzi alone, to Mr. Iannuzzi and Mr. Addonizio, an investigator appointed by the court pursuant to the Criminal Justice Act to assist Mr. Salvato in the preparation of his case, and in joint conferences with Mr. Iannuzzi, the defendants Santos, Felice and Salvato, along with defense attorneys Borg and Meyers and investigators for the defense Donnel and Addonizio.

Mr. Iannuzzi, who is an attorney, was privately retained by Mr. Salvato in a prior case and with whom Mr. Salvato had retained friendly relations.

At a conference with this court on March 1, 1977, with defendants Mr. Cabrera and Mr. Felice, Mr. Iannuzzi said he was going to represent one of these defendants, but it later turned out he was not retained by any of them. However, at the time he made motions on behalf of these defendants for reduction of bail.

The court subsequently appointed Daniel Meyers for Mr. Salvato, Charles Mirsky for Mr. Cabrera and Howard Friedman for Mr. Felice.

Mr. Salvato has testified that he conferred alone with Mr. Iannuzzi several times regarding the defense of this case, despite the fact that he had court-appointed counsel. Mr. Salvato considered Mr. Iannuzzi a friend and sought legal advice from him. Mr. Iannuzzi spoke to Mr. Salvato both on the telephone and personally at the Metropolitan Correctional Center. I have already held that Mr. Salvato's statements to Mr. Iannuzzi alone and to Mr. Iannuzzi and Mr. Addonizio together are privileged.

As to the statements made at joint conferences with other defendants and their lawyers, it appears that Mr. Iannuzzi conferred with Mr. Santos alone several times in the Metropolitan Correctional

1 hba

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2 Center in the absence of Mr. Borg. These talks took
3 place while Mr. Iannuzzi was on his way to see Mr.
4 Salvato. Mr. Iannuzzi seems to have been deeply
5 involved in this case without a clearly-defined re-
6 lationship to the participants.

7 In any event, the conferences were held
8 at the Metropolitan Correctional Center for the pur-
9 pose of developing the strategy for the defense and
10 were not social gatherings. The statements made at
11 such conference are held to be privileged.

12 MR. BORG: Judge, we are offering the
13 statement that was made to Mr. Iannuzzi at a meeting
14 that he had with both Salvato and Santos together.

15 THE COURT: I have ruled on that one yester-
16 day. And I refer to the fact that I ruled on
17 it yesterday in the statement I just made.

18 MR. BORG: I take exception, Judge.

19 THE COURT: On the facts of this case,
20 as I know them, I have seen them and have had them acted
21 out before me, I have made this ruling.

22 Mr. Iannuzzi is an attorney, he was in an
23 attorney-client relationship with those people.

24 MR. BORG: Exception.

25 MR. IANNUZZI: May I be excused, sir?

2 THE COURT: Yes.

3 MR. IANNUZZI: Thank you, sir.

4 MR. BORG: May I have a moment, Judge?

5 THE COURT: I have ordered Mr. Salvato
6 returned. I gather there is no need for his presence
7 any longer.

8 MR. BORG: The only question I could ask
9 Mr. Salvato other than what we have brought out is if he
10 would waive the privilege?

11 THE COURT: You have a right to ask him
12 whether he would waive the privilege. Go out and ask him
13 with Mr. Carey. Mr. Salvato is entitled to the
14 appointment of an attorney to advise him.

15 MR. BORG: Didn't he have Mr. Meyers?

16 THE COURT: Mr. Meyers, unfortunately,
17 was relieved by Judge Knapp at the time he changed his
18 plea.

19 Is Mr. Mirsky outside?

20 MR. BORG: I think there is a conflict
21 there.

22 MR. STALONAS: I would think so.

23 THE COURT: We will call down to Part I
24 and see if there is a lawyer around.

25 (Pause.)

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(Leonard Joy, Esq. makes his appearance in the courtroom.)

THE COURT: Mr. Joy, I have asked you appear to represent Mr. Salvato. Mr. Salvato is a defendant in the case which is on trial before me. Mr. Salvato pled guilty before the start of the trial and has testified for the government, making certain statements. Unfortunately, upon his taking a plea of guilty, some other judge relieved Mr. Salvato of his court appointed counsel, and he presently does not have counsel.

The defense in this case wishes to put on the stand a lawyer who is supposed to testify to statements made by Mr. Salvato to the lawyer, statements which are diametrically opposite to what Mr. Salvato has testified to on the stand. I took all the factual material into consideration and ruled that that conversation between Mr. Salvato and Mr. Ianuzzi was a privileged communication, as well as similar communications by Mr. Salvato and Mr. Ianuzzi to co-defendants and lawyers.

Mr. Borg, who represents the defendant Santos, now wishes to ask Mr. Salvato whether he wishes to waive the privilege. He has a right to ask Mr. Salvato that question. However, I said that that question could not be asked without Mr. Salvato's first receiving advice of counsel as

1 mmhh 2

2 to what he should do.

3 At this point I would suggest that Mr. Carey
4 and Mr. Borg go into my robing room with you in case each
5 of them wishes to give you additional information before
6 you talk to Mr. Salvato alone and advise him as to what
7 he should do.

8 (Mr. Joy, Mr. Carey and Mr. Borg leave the
9 courtroom and thereafter return.)

10 THE COURT: Mr. Joy?

11 MR. JOY: Your Honor, I have consulted with
12 Mr. Salvato in accordance with your Honor's instructions,
13 and after discussion of the matter with him he does not
14 wish to waive his attorney-client privilege.

15 THE COURT: Mr. Salvato then, I assume, can be
16 returned.

17 MR. CAREY: Yes, your Honor.

18 MR. BORG: Judge, I am going to ask for a stipula-
19 tion from Mr. Carey on one ticket received on March 4th
r2 20 at a bus stop. The actual ticket Mr. Carey has, along
21 with a photograph of it, indicating a bus stop violation.
22 This is offered to corroborate the defendant Felice's
23 testimony that Finn told him he had gotten a ticket and
24 wished Felice to pay it.

25 THE COURT: This is the ticket?

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OPINION NO. 45804

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
UNITED STATES OF AMERICA, :

-against- :

SALVATORE SCUDIERO, et al., :

Defendants. :

114 5804

77 Cr. 135
(CMM)

4 =

----- x
METZNER, D. J.:

The government hand delivered to the court at 4:30 P.M. today a letter requesting an adjournment of the trial. The letter further requested that it be sealed after it was read.

I find that the request made by the government is justified but the trial will only be adjourned for a period of one week from April 25, 1977 to May 2, 1977. This should afford ample opportunity to satisfy the reason for the request.

So ordered.

Dated: New York, N. Y.
April 15, 1977

Charles J. Metzner
U. S. D. J.

MICROFILM
APR 15 1977

put a bullet through Mr. Finn's head, Mr. Finn was informing on both the defendants Santos and Salvato.

This murder took place in a bar and grill of which defendant Felice was the manager and defendant Cabrera was the bartender. They are alleged to have witnessed the happening.

Mr. Finn frequented this bar and grill and Mr. Cabrera has told the New York City police, after being shown a photograph of the victim, that he did not know him. Defendant Felice is alleged to have told one of the eyewitnesses to the murder that he should contact the defendant Santos and tell him not to shoot his mouth off. This was done in the presence of defendant Cabrera.

Defendant Pecorino has a prior record, as does defendant Santos.

In view of the nature of the offense charged and the outline of the evidence against each accused, I find that the bail as fixed by the magistrate is proper and should not be disturbed. In doing this, I am drawing a distinction between the principals and the so-called accessories after the fact, Felice and Cabrera. However, the court notes that pursuant to 18 U.S.C. § 5, those two defendants may be treated as principals.

So ordered.

Dated: New York, N. Y.
March 16, 1977

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Charles H. H. Bar
U. S. D. J.

OPINION NO. 45696

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
UNITED STATES OF AMERICA,

-against-

SALVATORE SCUDIERO, a/k/a "Sally,"
LOUIS SANTOS, a/k/a "Louie the Chink,"
JOSEPH PECORINO, a/k/a "Joe Peck,"
JOSEPH ANTHONY SALVATO, a/k/a "Junior,"
PHILIP GEORGE FELICE, a/k/a "Philly"
and CARLOS CABRERA, a/k/a "Carl,"

Defendants.

----- x
METZNER, D. J.:

On March 1, 1977, all of the defendants, except Scudiero who is a fugitive, made an application for reduction of bail.

The crime here is essentially the murder of a government informant, Anthony Finn. Defendants Scudiero, Santos, Pecorino and Salvato are alleged to have violated Section 241 of Title 18 in that they deprived Mr. Finn of his civil rights by use of force resulting in death. The punishment for such a crime is life imprisonment.

Defendants Felice and Cabrera are charged with being accessories after the fact (18 U.S.C. §§ 1510, 2 and 3).

I gather that there are eyewitnesses to the event from the representations made by the Assistant United States Attorney. At the time that Mr. Scudiero is alleged to have

JUDGMENT & COMMITMENT

United States District Court

SOUTHERN DISTRICT OF NEW YORK

United States of America vs.

DEFENDANT

Louis Santos

DOCKET NO.

77 cr. 135 (CMM)

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government
the defendant appeared in person on this date

7 11 197

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Harold Borg Esq.

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea,☐ NOLO CONTENDERE,☐ NOT GUILTYThere being a ~~verdict~~/verdict of☐ NOT GUILTY. Defendant is discharged☒ GUILTY.

FINDING & JUDGMENT

Defendant has been convicted as charged of the offense(s) of **conspiracy against rights of citizens.**
(Title 18, United States Code; Section 241.)

as charged in count (1)

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that the defendant hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

SIX(6)YEARS on count (1).

SENTENCE
OR
PROBATION
ORDER

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SPECIAL
CONDITIONS
OF
PROBATION

ADDITIONAL
CONDITIONS
OF
PROBATION

MENT
CLASSIFI-
CATION

FILED BY

☒ U.S. District Judge

☐ U.S. Magistrate

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation, as set forth on the reverse side of this judgment be imposed. The Court may, however, alter the conditions of probation, reductions and additions, at any time during the probationary period or within a time, meaning total period of five years, as may be ordered by the Court. Any violation of the conditions of probation during the probation period.

The Court orders commitment to the custody of the Attorney General and transportation.

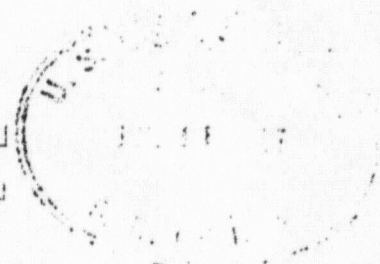
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JUL 12 1977

It is ordered that the Clerk of the Court shall cause a certified copy of this judgment and the conditions of probation to be filed in the office of the Attorney General and the Department of Justice, and to be transmitted to the appropriate authorities.

► *Charles W. Metzger*

Date July 11, 1977



132A

BEST COPY AVAILABLE

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2 UNITED STATES OF AMERICA

3 vs.

4 SALVATORE SCUDIERO, a/k/a
5 "Sally," et al.

6 New York, May 19, 1977,

7 9:30 a.m.

8 Trial resumed.

9 - -

10 (In the robing room.)

11 THE COURT: The government has submitted
12 a supplemental request No. 1 as to evidence and testimony
13 not used but unavailable to both sides. It is
14 denied.

15 (In open court; jury present.)

16 THE CLERK: Ladies and gentlemen, the
17 court is about to charge the jury. If there are any
18 spectators who wish to leave the courtroom, they may
19 do so now or remain seated until the completion of the
20 court's charge.

21 Will the marshal please lock the door.
22
23
24
25

CHARGE OF THE COURT

(Metzner, J.)

THE COURT: Mr. Kaskins, ladies and gentlemen of the jury:

We have now reached the point in this trial when you are about to enter upon your final function as jurors, which is, of course, one of the most sacred duties of citizenship. You have given careful attention to the evidence during the course of the trial and I am certain that you will conduct your deliberations in the same fine spirit that you have so far displayed and with impartiality and fairness reach a just verdict in this case.

In our court system, the functions of the judge and the functions of the jury are clearly defined. It is my duty to instruct you as to what the law is, it is your duty to accept the law as I charge it to you. Just as I am the exclusive judge of the law, so you are the exclusive judges of the facts. You alone determine the credibility of the witnesses and the weight, effect and value that should be given to their testimony. It is up to you to determine from the evidence you have heard what the facts are in this case and from those facts decide whether

a defendant has violated the law.

This is a criminal prosecution in which the government is one party and the defendants are the others. The fact that the government is a party entitles it to no greater and to no lesser consideration than any other party. It is entitled to the same consideration as given to the defendants, no more and no less.

This case must be decided within the scope of the charges against each defendant as contained in the indictment, but before discussing the law applicable to the charges in the indictment, let us consider some general principles which apply in every criminal case.

The indictment itself is not evidence. It merely describes the charges made against the defendant and may not be considered by you as evidence of the guilt of the defendant. Nor can the fact that a grand jury has found an indictment in any way detract from the presumption of innocence with which the law surrounds a defendant, unless and until his guilt is proved beyond a reasonable doubt.

Each of the three counts in the indictment which you will consider alleges the commission of a

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2 separate and distinct offense. It will be necessary for
3 you to reach a verdict of guilty or not guilty as to each
4 defendant separately on each of the counts of the indictment
5 in which he is a defendant. You must consider and weigh
6 the evidence separately as to each defendant named in each
7 count. The fact that you may find all or some of the
8 defendants guilty or not guilty of one of the offenses
9 charged should not control or influence your verdict with
10 respect to any other offense of which a defendant is charged.

11 Now, you have heard testimony that Joseph
12 Salvato has pled guilty to the second count of the
13 two charges against him in this indictment. I must
14 caution you that the fact that he has pled guilty to
15 this count should not be considered by you in any
16 way in passing upon the guilt or innocence of any of
17 the other defendants now on trial. The guilt or
18 innocence of these defendants should be determined by
19 you solely from the evidence that is presented to you
20 on this trial.

21 In addition, two of the defendants named in
22
23

24 (Continued on next page)
25

1 this indictment, Salvatore Scudiero and Carlos Cabrera,
2 are not being tried in this case. This should not
3 be considered or discussed by you or influence
4 you in any way in passing upon the guilt or innocence
5 of the defendants now on trial.
6

7 Each defendant has denied the charges made
8 against him by this indictment. By his plea of
9 not guilty each defendant has put into issue every
10 material fact alleged in the accusations brought
11 against him.

12 Accordingly, the government, having made
13 the charge, has the burden of proving beyond a reason-
14 able doubt each material element of each count in the
15 indictment. This rule applies to each defendant
16 individually as to each of the counts in the indictment
17 in which he is named. The burden of proof never
18 shifts. It remains with the government throughout
19 the entire trial and during your deliberations as ju-
20 rors.

21 A defendant does not have to prove his
22 innocence. He is presumed to be innocent and this
23 presumption is overcome only when you reach a conclusion
24 from the evidence that his guilt has been established
25 beyond a reasonable doubt.

The law does not compel a defendant to take the witness stand and testify, and no presumption of guilt may be raised and no inference of any kind may be drawn from the failure of the defendant to testify.

What is meant by reasonable doubt? There is nothing mysterious about the term. It means, as the words themselves indicate, a doubt based upon reason and common sense which arises after consideration of all the evidence. Reasonable doubt is a doubt which would cause reasonable persons to hesitate to act in matters of importance to themselves. It is not a vague, speculative, imaginary something, and a person may not be convicted on mere suspicion or conjecture. On the other hand, a reasonable doubt does not exist merely because a juror does not wish to perform an unpleasant duty. A reasonable doubt may arise not only from the evidence produced but also from the lack of evidence.

A defendant may also rely upon evidence brought out on cross examination of any witnesses who have testified on behalf of the government. He may raise a reasonable doubt in your mind as to the existence of one or more of the essential elements of the crime

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without affirmatively presenting his version or all or any of the facts. This is so because the law does not impose upon a defendant a duty to produce evidence.

Now, it is not necessary for the government to prove the guilt of the defendant beyond any possible doubt. Proof is usually not a matter of mathematical or absolute certainty. In the nature of things it cannot be. But to sustain a conviction there must be such proof as satisfies your reason as intelligent people beyond any reasonable doubt that a defendant is guilty as charged. If you do not have a reasonable doubt of a defendant's guilt as to the material elements of a charge, then you should return a verdict of guilty on that count. On the other hand, if you do have a reasonable doubt as to a defendant's guilt as to any of the material elements of the crime charged, then you must return a verdict of not guilty as to that defendant on that count.

This trial has been a short one and you have heard the summations of counsel in which they have pointed out the various portions of the proof on which they say you should rely to render a verdict in favor of their client. I see no reason to further detail the

contentions of the parties or the specific proof to substantiate those contentions.

The first count of the indictment which you will consider is the conspiracy count. You will have to determine whether Louis Santos and Joseph Pecorino are guilty of this charge.

Section 241 of Title 18 of the United States Code makes it a crime for two or more persons to conspire to injure, oppress, threaten or intimidate any citizen in the free exercise and enjoyment of a right or privilege secured to him by the Constitution and laws of the United States.

This count charges that on or about January 1, 1974, ~~on or about March 5, 1974,~~ in the Southern District of New York, Salvatore Scudiero, Louie Santos, Joseph Pecorino and Joseph Salvato, and others to the grand jury unknown, unlawfully, wilfully and knowingly did so conspire as to Anthony Finn.

A citizen has the right and privilege to give information to the proper authorities concerning violations of the drug laws of the United States, and this right is secured to him by the Constitution and laws of the United States.

Count 1 further alleges that this conspiracy

1 hba
2 resulted in the death of Anthony Finn.

3 Now, what is a conspiracy? It is a combina-
4 tion or agreement of two or more persons by con-
5 certed action to accomplish a criminal or unlawful
6 purpose and one or more of the persons who are members
7 of the conspiracy does any act to effect or further
8 the object of the conspiracy. It is a partnership
9 in criminal purposes in which each member becomes the
10 agent of every other member and is a crime in itself.

11 To prove a conspiracy here the evidence
12 must show beyond a reasonable doubt the existence of
13 each one of the following material elements:

14 First, that the conspiracy described was
15 formed and existing at or about the time alleged;

16 Second, that it was the purpose of the
17 conspiracy to injure, oppress, threaten or intimidate
18 Anthony Finn in the free exercise or enjoyment of Finn
19 of a right or privilege secured by the Constitution
20 or laws of the United States;

21 Third, that the intended victim, Finn, was a
22 citizen of the United States;

23 Fourth, that the defendant knowingly and
24 wilfully became a member of the conspiracy;

25 Fifth, that one of the conspirators there-

after knowingly committed at least one of the overt acts charged in the indictment at or about the time and place alleged; and,

Sixth, that such overt act was committed in furtherance of some object or purpose of the conspiracy.

Now, as to the formation of a conspiracy, it is not necessary that there be proof that the participants met together and entered into a formal or written agreement, or that they directly stated between themselves what their object or purpose was to be or the details of the plans or the means by which the purpose was to be achieved. Indeed, it would be extraordinary for the members of a conspiracy to set forth all the actual details of their arrangements in a formal and written agreement. When persons in fact embark together upon a criminal conspiracy, much is often unexpressed, much is left to unwritten understanding. Generally, such a criminal conspiracy is a matter of inference deduced from the acts and statements of the alleged conspirators.

What the evidence must show in order to establish that a conspiracy existed is that at least two persons some way or other positively or tacitly

came to a mutual understanding to engage in a common and unlawful plan to violate the law.

In determining whether or not there was an unlawful agreement, you may judge the acts and conduct of the alleged conspirators as a whole and the reasonable inferences to be drawn from such evidence. If you satisfy yourselves beyond a reasonable doubt that the conspiracy as alleged in the indictment existed, then you must determine that the purpose of the conspiracy was to injure, oppress, threaten or intimidate Finn in the free exercise or enjoyment by him of a right or privilege secured by the Constitution or the laws of the United States.

The meaning of the words "injure, oppress, threaten or intimidate" are clear.

As I have already stated, the right and privilege to give information to the proper authorities about violations of the drug laws is a right and a privilege protected by the Constitution and laws of the United States.

The third element that the government must prove beyond a reasonable doubt is that Finn was a citizen of the United States. It has been stipulated by counsel that Finn was a citizen of the United

States.

As to the fourth element which must be established beyond a reasonable doubt, you must determine as to each defendant whether that defendant knowingly and wilfully was an active participant in the unlawful plan with the intention of furthering its objectives. Mere knowledge by a defendant of an illegal act on the part of some other defendant or alleged co-conspirator is not sufficient. Merely acting in a way which incidentally furthers the purpose of the conspiracy without acknowledging that a conspiracy exists does not make a person a member of the conspiracy.

You have heard testimony of narcotic transactions involving Santos and Finn, Salvato and Finn and Pecorino and Felice with the partner of Rivera. This testimony can be considered by you for the purpose of determining the existence of the conspiracy. In addition, this testimony regarding each defendant may be considered by you solely as to that defendant's membership in the conspiracy.

You may find that a defendant acted knowingly and wilfully if he acted voluntarily and purposely, with specific intent to do something which the law forbids. That is to say, that he must have acted with

1 evil motive or had purpose to disobey or disregard
2 the law, and not because of negligence, mistake, in-
3 advertence or other innocent reason.
4

5 It is obviously impossible to ascertain or
6 prove directly what a person knew or intended. You
7 cannot look into a person's mind and see what his
8 intentions were or what he knew. But a careful and
9 intelligent consideration of the facts and circumstances
10 shown by the evidence in any given case as to the
11 person's actions and statements enables us to infer
12 with a reasonable degree of certainty and accuracy what
13 his intentions were in doing or not doing certain things
14 and the state of his knowledge.

15 In determining whether or not a particu-
16 lar defendant was a member of a conspiracy, you may
17 consider his own acts, statements and conduct, as well
18 as the evidence of the acts, statements and conduct of
19 other alleged co-conspirators and the reasonable infer-
20 ences to be drawn from such evidence.

21 If a defendant, with knowledge of the
22 specific object of a plan, intentionally encourages,
23 advises or assists the scheme for the purpose of further-
24 ing it, he thereby becomes a knowing and wilful
25 participant, he thereby becomes a conspirator.

1 The guilt of a conspirator is not governed
2
3 by the extent of his participation. It is not re-
4 quired that each of the conspirators participate in or
5 have knowledge of all of its operations. He may
6 join at any point in its progress and be held respon-
7 sible for all that may be or has been done.

8 The indictment alleges that the conspiracy
9 commenced on or about January 1, 1974 and continued to
10 about March 5, 1974. The government is not required
11 to prove that the alleged conspiracy existed over the
12 whole course of time set out in the indictment. It
13 is sufficient if you find that any time within that
14 period all the elements of the alleged conspiracy
15 have been proven to your satisfaction beyond a reason-
16 able doubt. The fact that the government may not
17 have proved that the conspiracy was carried on as
18 early or as long as the indictment alleges is not of
19 any importance so far as the elements of the crime are
20 concerned.

21 The fifth element that must be proved on
22 this issue of conspiracy is the requirement of an
23 overt act. You may not find a defendant guilty of
24 conspiracy unless you are convinced beyond a reason-
25 able doubt that one of the conspirators knowingly

1 committed one of the overt acts charged in the indictment. The govern-
2 ment. The government need not prove the commission of all the overt
3 acts charged in the indictment.
4

5 By the term "overt act" is meant any act knowingly
6 done by one of the conspirators in an effort to effect or accomplish
7 some object or purpose of the conspiracy. The overt act need not be
8 criminal in nature if considered separately and apart from the
9 conspiracy. It may be as innocent as the act of a man walking across
10 the street or using a telephone.

11 The overt acts referred to in this indictment are:

12 (1) On or about March 4, 1974, Louis Santos,
13 Salvatore Scudiero, Joseph Anthony Salvato, the defendants, and
14 others had a meeting in the Sepret Tables Restaurant at 340 Third
15 Avenue, Manhattan, New York.

16 (2) On or about March 4, 1974, at Ruby's
17 Lounge at 206 East 52nd Street, Junior Salvato, a defendant in
18 this case, told Anthony Finn in substance "Here comes Little
19 Tommy."

20 (3) Between on or about March 4, 1974, at
21 approximately 11:30 p.m., and on or about March 5, 1974, at
22 approximately 12:10 a.m., Joseph Anthony Salvato, the defendant departed
23 Ruby's Lounge at 206 East 52nd Street, Manhattan, New York, in the company
24 of Anthony Finn.
25

(4) On or about March 5, 1974, at the Alley Cat, 188 First Avenue, Manhattan, N.Y., Louis Santos and Joseph Pecorino. The defendants did assault, beat, injure and threaten to kill Anthony Joseph Finn, in the presence of Philip George Felice and Carlos Cabrera and others to the grand jury known and unknown.

(5) On or about March 5, 1974, at the Alley Cat, 188 First Ave., Manhattan, New York Salvatore Scudiero did shoot and kill Anthony Finn.

(6) On or about March 5, 1974, Joseph Pecorino, the defendant drove an automobile registered in the name of Finn to the curb in front of the Alley Cat, 188 First Avenue, Manhattan, New York.

(7) On or about March 5, 1974, Salvatore Scudiero and Louis Santos, the defendant threw the body of Anthony Finn and drove the automobile to the corner of Avenue A and East 9th Street, Manhattan, New York.

The fact that a particular defendant is not named in an overt act is of no importance, because once you find that a conspiracy existed and that a defendant on trial was a member of the conspiracy, then he is bound by the acts done and statements made by any other member in furtherance of that conspiracy even in the absence of such defendant. Once you have determined that the offense has been established

1 hba
2 under the guidelines I have just given you, then the
3 crime of conspiracy is complete as to every person
4 found by you to have been knowingly and wilfully a
5 member of the conspiracy.

6 There is no dispute in the evidence that
7 Finn met his death some time during the late evening
8 of March 4, 1974, the early morning hours of
9 March 5, 1974. If you find a defendant guilty
10 under count 1, you will be asked at the time of render-
11 ing your verdict whether the government has proved be-
12 yond a reasonable doubt that the death of Finn resulted
13 from the actions taken pursuant to the conspiracy.

14 Death results from the conspiracy charged
15 in the indictment if it was caused by an act of one or
16 more of the conspirators in furtherance of the purpose
17 of the conspiracy. Death does not result from a
18 conspiracy if caused by the acts of any other person
19 who was not a member of the conspiracy or even if it
20 was caused by a member of the conspiracy but not in
21 furtherance of its purpose or within the scope of the
22 conspiracy.

23 Count 2 of the indictment charges Louis San-
24 tos and Joseph Pecorino with a violation of Section 1510
25 of Title 18 of the United States Code. Section

1510 makes it a crime to wilfully endeavor by means of intimidation or force or threats to obstruct or prevent the communication of information relating to a violation of any criminal statute of the United States by a person to a criminal investigator.

In order to find Louis Santos and Joseph Pecorino guilty of count 2, you must find, as to each defendant, that the two elements have been proven beyond a reasonable doubt:

First, that the defendant wilfully entered by means of certain acts of intimidation or force or threat to prevent communication of information relating to a violation of any criminal statute of the United States.

"Wilfully" is defined in the same manner as I defined it for you under count 1. The word "endeavored" as used here means trying to accomplish something. I instruct you that the information Finn was providing did relate to violations of the criminal drug laws of the United States. I further charge you that a defendant may be found guilty of this charge even though the information given did not relate to a defendant on trial here.

The second element that must be proven

1 beyond a reasonable doubt is that the criminal investigator
2 be an individual authorized by a department or agency of
3 the United States to conduct or engage in investigations of
4 all prosecutions for violations for violations of the
5 criminal drug laws of the United States. The Drug
6 Enforcement Agency and its agents are engaged in such
7 investigations.
8

9 Evidence has been introduced tending to establish
10 an alibi for the defendant Pecorino. He contends that
11 he was not present at the time when or at the place where
12 he is alleged to have committed the offenses charged in
13 the indictment. The government's burden of proof of
14 beyond a reasonable doubt covers the defense of alibi as
15 well as all the other material elements of the crimes
16 charged. The burden of proof never shifts to the accused
17 and if your consideration of the alibi testimony leaves in
18 your mind a reasonable doubt as to the presence of the
19 defendant, then the government hasnot proved the guilt
20 of the accused beyond a reasonable doubt.

21 Finally, count 3 of this indictment charges
22 Philip Felice with violation of Section 3 of Title 18
23 of the United States Code. If you acquit both the
24 defendant Santos and Pecorino of the charges contained
25 in counts 1 and 2, then you must acquit the defendant

Felice of the charge made against him in this count of the indictment.

Section 3 makes it a crime for anyone, knowing that an offense against the United States has been committed, to **comfort** or assist the offender or offenders in order to hinder or prevent their apprehension. This is known in the law as being an accessory after the fact. To be found guilty of this charge, the government must prove the following two elements beyond a reasonable doubt:

First, that the defendant Felice had actual knowledge of the commission of the offenses charged in counts 1 or 2 of this indictment.

Second, that he in some way wilfully assisted those who committed the crime in order to hinder or prevent their apprehension.

I have already defined for you what is meant by the words "knowingly" and "wilfully."

In order to assist a defendant by hindering or preventing his arrest, you must find beyond a reasonable doubt that Felice said or did something to achieve this result.

In determining the guilt or innocence of a defendant, you must decide that question solely

1 from the evidence you heard from the witness stand and
2 the exhibits that have been placed before you. The
3 summations of counsel which you have heard are not to
4 be considered as evidence but only as arguments to you
5 as to what counsel feel you should find from the evi-
6 dence.
7

8 In determining the issues in this case,
9 it is your recollection of the testimony that is to
10 control and not that of counsel.

11 There are, generally speaking, two types
12 of evidence from which a jury may properly find the
13 truth as to the facts of a case. One is direct evi-
14 dence, such as the testimony of an eyewitness. The
15 other is indirect or circumstantial evidence, which is
16 the proof of a chain of circumstances pointing to the
17 existence or nonexistence of certain facts. Circum-
18 stantial evidence is the proof of facts from which you
19 may reasonably infer a material element of a crime.

20 Let us take a simple example to illustrate
21 what is meant by circumstantial evidence. We will
22 assume that as you entered the courthouse this morning
23 the sun was shining brightly outside, it was a clear
24 day, there was no rain. Now assume that in this court-
25 room the blinds are drawn, the drapes are drawn, so that

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you cannot look outside. Assume further as you are sitting in this jury box, despite the fact that it was dry and sunny when you entered the building, someone walks in with an umbrella dripping water, followed in a short time by a person wearing a raincoat which is wet. If you are asked whether it is raining now, you cannot say that you know it directly of your own observation, but certainly upon the combination of facts which I have stated to you, even though when you entered the building it was not raining outside, it would be reasonable and logical for you to conclude that it is raining now. That is about all there is to circumstantial evidence.

You may draw such inferences as reason and common sense lead you to draw from facts which you find to have been proven. Great care must be exercised when drawing inferences from circumstances proved in criminal cases and mere suspicions will not warrant a conviction. However, no greater degree of certainty is required of circumstantial evidence than is required of direct evidence. It is not on any different or lower plane than direct evidence. The law simply requires that in either case you must be convinced beyond a reasonable doubt of the guilt of the defendant.

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1 hba
2 47, during the course of the trial, the
3 court sustained an objection by one counsel to a
4 question asked by the examining counsel, you are to
5 disregard that question and any alleged facts contained
6 in the question, and you may not speculate as to
7 what the answer would have been. If a question was
8 asked and an answer given by the witness, and I
9 have then stricken the answer from the record, you are
10 to disregard both the question and the answer in your
11 deliberations.

12 In your search for the truth, you must
13 use plain, everyday common sense. You must not be
14 governed by sympathy, bias or prejudice.

15 You have seen the witnesses on the stand
16 and observed their manner of giving testimony. When
17 I refer to witnesses, I of course include the defendant
18 Felice, who has testified here. How did the witnesses
19 impress you? Did they appear to be testifying frankly,
20 candidly and fairly?

21 In determining what degree of credit you
22 should give a witness' testimony, you may consider his
23 conduct, his manner of testifying and his interest
24 in the outcome of the trial. You should also consider
25 his relationship to the government or a defendant,

1 his bias or impartiality, and any motive he may have
2 for testifying falsely. It does not necessarily
3 follow, of course, that because a person is interested
4 in the result he is incapable of telling a truthful
5 version of an occurrence.
6

7 You have heard the testimony of Joseph
8 Salvato that the defendants on trial were participants
9 in the crimes alleged in the indictment. The testi-
10 mony of an alleged accomplice should be received with
11 great caution and scrutinized with care. This does
12 not mean that such testimony, if believed by you, is
13 of any different or lesser quality than any other
14 evidence. It should be considered by you after
15 giving it whatever weight you think it deserves along
16 with all the other evidence in the case in determining
17 whether the guilt of a defendant has been proved
18 beyond a reasonable doubt.

19 You may find a verdict of guilty solely on
20 the uncorroborated testimony of an accomplice if you
21 believe that testimony beyond a reasonable doubt.

22 If you believe that a witness wilfully
23 testified falsely to any material fact, you may disre-
24 gard his testimony altogether, or you may accept that
25 part of his testimony which you believe worthy of

1 hba
2 credence. What you accept or reject as credible
3 evidence is for you to determine, but you may not go
4 outside the evidence to speculate as to the facts.

5 The quality of the particular witnesses,
6 regardless of who calls them, rather than the quantity
7 of the witnesses is the test to be used in arriving
8 at your decision.

9 There is no presumption that the witnesses
10 for the government are more or less truthful or credible
11 than the witnesses for a defendant.

12 Evidence that a witness has been convicted
13 of a crime may only be considered by you in assessing
14 his credibility as a witness and the weight you will
15 give to his testimony.

16 You have heard the testimony of
17 experts called on behalf of the government. How do
18 you as laymen determine the facts from expert tes-
19 timony? You are to act in exactly the same way that
20 you would appraise and determine the credibility of an
21 ordinary witness as I have already outlined for you.
22 Ordinary witnesses are allowed to tell you only what
23 they see, hear or experience. An expert is also
24 permitted to tell you his opinion by reason of his
25 training and knowledge in a particular field.

1
2 As you well know, an opinion is something
3 a witness forms in his own mind, based on specific
4 facts from which, using his judgment, training
5 and experience, he draws certain conclusions. Of
6 course, if you fon't believe the facts which form the
7 basis of the expert's opinion, then is opinion is
8 valueless. But otherwise you will treat an expert's
9 opinion as evidence which you have heard. You may
10 accept it or may reject it in whole or in part, and it
11 is entirely up to you as to what you will do with
12 it as testimony and what credibility you will give to
13 it.

14 You should consider a witness' entire
15 testimony, his direct examination, his cross examination
16 and his redirect examination. You should consider
17 the strength or weakness of his recollection in the
18 light of all the testimony and attendant circumstances
19 in the case.

20 Inconsistencies or discrepancies in the
21 testimony of a witness or between the testimony of
22 different witnesses may or may not cause you to dis-
23 credit such testimony. Two or more persons witnessing
24 an incident or a transaction may see or hear it
25 differently. Innocent misrecollection, like failure

1 hba

2 of recollection, is not an unusual experience. In
3 weighing the effect of a discrepancy, consider whether
4 it pertains to a matter of importance or an unimportant
5 detail, and whether the discrepancy results from innocent
6 error or wilful falsehood.

7 You may call for any exhibits which you
8 desire to see in conjunction with your deliberations.
9 You may call for a reading of any portion of the reporter's
10 notes of the evidence or any portion of this charge.

11 You are instructed that the question of
12 possible punishment of a defendant in the event of
13 conviction is no concern of the jury and should not in
14 any sense enter into or influence your deliberations.
15 The duty of imposing sentence in the event of con-
16 viction rests exclusively upon the court. The function
17 of the jury is to weigh the evidence in the case and
18 determine the guilt or innocence of a defendant solely
19 upon the basis of such evidence.

20 I have sought to avoid any comments
21 which might suggest that I have any views on the evi-
22 dence or that I have any opinion as to the guilt or
23 innocence of a defendant. You are not to assume that
24 I have any such views or opinion. This charge is
25 given to you solely to instruct you as to the law

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applicable to the case.

The actions of the judge during the trial in granting or deny motions or ruling on objections by counsel, or in statements to counsel or attempting to clearly set forth the law in these instructions, are not to be taken by you as any indication of any determination of the issues of fact. These matters, the actions of the court, relate solely to procedure and law. You, the members of the jury, determine the facts.

There are 12 members of this jury, and all of you must agree upon any verdict you reach as to any defendant on any count in the indictment.

This case is obviously an important one to the defendants. It is equally important to the government. I am submitting it to you in complete confidence that you will comply with your oath as jurors and decide the case fairly and impartially and without fear or favor.

If there are any exceptions to the charge I will take them in the robing room.

MR. CAREY: I have no exceptions, your Honor.

MR. BORG: No exceptions.

1 hba
2 THE COURT: Mr. Stalonas?

3 MR. STALONAS: No exceptions.

4 THE COURT: Mr. Friedman?

5 MR. FRIEDMAN: Just one.

6 (In the robing room.)

7 MR. FRIEDMAN: Your Honor, the defendant
8 Felice has an exception to that portion of your Honor's
9 charge which advised the jury that Felice could be a
10 member of the conspiracy because of the testimony of
11 Rivera that he sold drugs in 1971.

12 THE COURT: I didn't say that. I said
13 the existence of a conspiracy, and then I went on to
14 say that the testimony could be used as to each one
15 being a member. Felide is not charged as a member.

16 MR. FRIEDMAN: That is my only exception.

17 THE COURT: Exception denied.

18 MR. CAREY: Your Honor, I have one addi-
19 tional request.

20 THE COURT: Denied. I don't take requests
21 at this time.

22 MR. CAREY: It was a request made earlier.

23 THE COURT: Then I have ruled on it.

24 MR. CAREY: On aiding and abetting.

25 THE COURT: I have ruled on it.

MR. CAREY: It was in our miscellaneous requests.

THE COURT: I saw it and I said I wouldn't give it.

(In open court.)

THE COURT: At this time, Mrs. Feldman, Mr. Katcher, Mr. Shea, Mrs. Hill, Mr. Luger and Mr. Lederer, you leave us. You do not participate in the deliberations. If you have anything in the jury room kindly go in now and get it and report back to the jurors' assembly room in Room 109.

(The alternate jurors were excused.)

THE CLERK: Will the marshall please rise and raise your right hand.

(Marshal duly sworn.)

THE COURT: You may follow the marshal.

(At 10:30 a.m. the jury retired to commence its deliberations.)

THE COURT: I assume if the jury requests any of the exhibits counsel can agree among themselves without bring the jury back and my coming down. If you want I will come down.

MR. STALONAS: Just one thing though. I wouldn't want any blanket thing if they request something,

1 hba

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2 because there are a number of items that had to be
3 redacted.

4 THE COURT: If you have any problems I
5 will come down. I hope you can work them out
6 between yourselves.

7 MR. CAREY: Your Honor, has the court
8 provided the jury with a verdict slip.

9 THE COURT: No, I said they would be asked
10 upon coming in.

11 MR. CAREY: I have prepared and will
12 submit to the court at this time a verdict sheet.

13 THE COURT: No, we will just ask them
14 if they found the defendants guilty of count 1. If
15 they find them guilty of count 1, then we will put the
16 question to them if they found beyond a reasonable
17 doubt if the death has resulted from the conspiracy.
18 That is all that is necessary.

19 (Recess.)
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21
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(12:55 p.m.; jury present.)

THE COURT: Ladies and gentlemen of the jury, you have sent a note in which reads as follows:

"The obstruction charge on Pecorino."

THE FOREMAN: We would like the wording of it.

THE COURT: I will read it to you.

Count 2 of the indictment charges Louis Santos and Joseph Pecorino with a violation of Section 1510 of Title 18 of the United States Code. Section 1510 makes it a crime to wilfully interfere by means of intimidation or force of threats to obstruct or prevent the communication of information relating to violation of any criminal statute of the United States by any person to a criminal investigator.

In order to find Louis Santos or Joseph Pecorino guilty of count 2 you must find as to each defendant that the following two elements have been proven beyond a reasonable doubt:

First, that the defendant wilfully interfered by means of certain acts of intimidation or force or threat to prevent communication of information relating to a violation of any criminal statute of the United States.

"Wilfully" is defined in the same manner as I have defined it for you in count 1. The word "endeavored" as used here means trying to accomplish something. I instruct you that the information Finn was providing did relate to violations of the criminal drug laws of the United States.

I further charge you that a defendant may be found guilty of this charge even though the information given did not relate to a defendant on trial here.

The second element that must be proven beyond a reasonable doubt is that the criminal investigator be an individual authorized by a department or agency of the United States to conduct or engage in investigations of all prosecutions for violations of the criminal drug laws of the United States. The Drug Enforcement Agency and its agents are engaged in such investigations.

That is the end of the charge on count 2. You may return to the jury room.

(At 1:00 p.m. the jury retired to resume its deliberations.)

THE COURT: Counsel are excused until 2 o'clock for lunch.

MR. STALONAS: Your Honor, could I have

1 hba

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2 the exact nature of the note read? I don't know
3 if I just caught the substance of it.

4 THE COURT: "The obstruction charge on
5 Pecorino."

6 MR. STALONAS: Is that how it reads?

7 THE COURT: Yes.

8 MR. STALONAS: Is that going to be marked
9 as a court exhibit?

10 THE COURT: Yes. Court Exhibit 5.

11 (Court Exhibit 5 marked.)

12 (3:45 p.m.; in open court; jury not pre-
13 sent.)

14 (Court's Exhibit 6 marked.)

15 THE CLERK: Court's Exhibit 6, message
16 from the jurors:

17 "Request the testimony given by Benjamin
18 Rosado and Joseph Salvato at Sepret Tables between
19 these parties and anyone else at Sepret Tables.
20 Also, Joseph Vasquez' testimony concerning events
21 at Sepret Tables."

22 Signed by the foreman.

23 THE COURT: I am paying to give you
24 a copy, you don't bring it to court?

25 MR. FRIEDMAN: Sorry, your Honor.

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MR. BORG: Judge, I will give the court the copies that are marked off.

THE COURT: Is there any dispute?

MR. BORG: We didn't discuss it yet.

THE COURT: Let's do it. Come on. There isn't that much testimony involved.

MR. CAREY: On Salvato it is page 926, line 21, through 938, line 17.

THE COURT: What page have you got?

MR. CAREY: On Salvato, it is page 936, line and we have a difference.

THE COURT: To what page?

MR. BORG: I have 139, line 4.

THE COURT: What do you have, Mr. Carey?

MR. CAREY: 938, line 17.

THE COURT: Let me see it.

MR. BORG: 939, line 9, Judge.

THE COURT: Hold it.

(Pause.)

THE COURT: The portion you want, the balance of 38, has nothing to do with this query.

"Request the testimony given by Rosado and Salvato at Sepret Tables between these parties and anyone else. . ."

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1 hba
2 This is just a query, "Do you know anybody
3 there?"

4 MR. BORG: It relates to when he left
5 Sepret Tables.

6 THE COURT: After you reach 938, line 6, he
7 is asked:

8 "Was there anybody else there?"

9 "Did you recognize. . .?"

10 "Who was that, Chino?"

11 "Were they present at the discussions?"

12 No. That is not called for by this in-
13 quiry.

14 MR. BORG: But, Judge, it refers to Chino
15 being there. He knew people there by the name of
16 Chino. The question was did he participate in the
17 discussion, and the answer is no, but nevertheless
18 he is there.

19 THE COURT: Here is what it reads:

20 "Request the testimony given by Benjamin
21 Rosado and Joseph Salvato at Sepret Tables between
22 these parties and anyone else."

23 That isn't testimony with anyone else. He
24 was being inquired:

25 "Was somebody else in the building?"

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"Yes."

That doesn't come in.

What is the next one?

MR. BORG: May I ask what line?

THE COURT: Line 6. I am sorry.

938, line 6.

MR. BORG: I respectfully except. I am requesting that it go to line 21, regarding Chino present at the discussion.

THE COURT: The answer is no. He wasn't there.

MR. CAREY: On cross examination of Mr. Salvato, page 979, line 17.

MR. BORG: Prior to that there is something on 940. Line 23 on page 940.

MR. CAREY: I don't think that is within the request, your Honor.

MR. BORG: Certainly. It is our opinion, Judge, that it relates to a conversation had with somebody else, meaning Santos.

THE COURT: At Seprat Tables, not with Finn.

"Prior to arriving at the Alley Cat had you had any discussion with Tony Finn about the conver-

sation earlier that night which you had at
Sepret Tables?"

The question is what was the conversation
at Sepret Tables, not with Finn thereafter.

Page 941, that is a conversation with Finn.

MR. CAREY: Page 971 or 979?

MR. BORG: 979.

MR. CAREY: Line 17.

MR. BORG: I have line 12.

THE COURT: Let's take a look at it.

979, line 12 is right. To?

MR. CAREY: 981, line 3.

THE COURT: Does that agree with you,

Mr. Borg?

MR. BORG: I have to agree, although
I would request it to line 5.

THE COURT: "Where did you go next?" isn't a
conversation?

Does that finish Salvato?

MR. CAREY: Yes.

MR. BORG: Yes, Judge.

THE COURT: All right. Now what about
Rosado?

MR. CAREY: Rosado, page 313.

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THE COURT: Rosado, page 313?

MR. BORG: Yes, the bottom, Judge, line

23.

THE COURT: To where?

MR. BORG: Page 317, line 9.

THE COURT: Is that agreed?

MR. BORG: Yes, Judge.

THE COURT: What else?

MR. CAREY: Page 451, line 5.

Line 5.

THE COURT: Do you agree that is the beginning, Mr. Borg?

MR. BORG: Yes.

THE COURT: To where?

MR. CAREY: 452, line 11.

MR. BORG: Line 10 is the last answer.

MR. CAREY: 452, line 11.

MR. BORG: I have 454, line 9.

THE COURT: I will take that to 452, line 23. Then you start at 453, line 7, to 453, line 7, to 453, line 13.

Next, 454. Nothing on 454 regarding Sepret Table^s, Mr. Borg.

Next, after Rosado?

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MR. CAREY: 495, line 5.

THE COURT: 495, line 5.

MR. BORG: To 496, line 17.

THE COURT: You don't get line 8 through
12.

MR. BORG: Striking that out. But
I'm talking about the admissible testimony.

THE COURT: 971?

MR. BORG: Yes, sir.

THE COURT: 496, line 7, 496, line 13,
line 17.

What else?

MR. BORG: Page 583. No, that does
not relate to conversation, Judge, I withdraw that.

THE COURT: Anything else?

MR. STALONAS: Your Honor, was the question
as to who was there as well, or just the conversation?

THE COURT: "Request the testimony given
by Rosado and Salvato at Sepret Tables between
these parties and anyone else at Sepret Tables."

What else have you got?

MR. CAREY: That is all I have, your
Honor.

THE COURT: Mr. Borg?

MR. STALONAS: Apparently, your Honor, Vasquez' testimony was that he was at Ruby's Lounge.

THE COURT: We haven't come to Vasquez. We are doing Rosado.

MR. BORG: I have found nothing else.

THE COURT: What about Vasquez?

MR. BORG: My understanding is that the note would also request conversations between themselves and anyone else.

THE COURT: Yes, who are you talking about.

MR. BORG: I am talking about Vasquez because he is mentioned in Salvato's testimony as being present but not participating in the conversation.

THE COURT: And anyone else. Where? Give me the page.

MR. BORG: In Salvato's testimony, that the court would not permit.

THE COURT: He wasn't at the table with them, he said.

MR. BORG: He was there.

THE COURT: He wasn't at the table with him, Salvato. So he couldn't have talked to him and he doesn't say he talked to him.

Now go to Vasquez' testimony.

MR. CAREY: The government, I found no testimony by Mr. Vasquez about conversations in Sepret Tables.

THE COURT: Do you agree?

MR. BORG: Yes.

THE COURT: All right. Bring the jury in.

MR. BORG: Vasquez testified that he was not in Sepret Tables, Judge.

MR. STALONAS: Could the court request the jury if they have reached a verdict?

THE COURT: I will not until they have indicated that they have either agreed or can't agree; then I will ask him that question.

(4:20 p.m; jury present.)

THE COURT: Mr. Haskins, ladies and gentlemen of the jury, you have sent in a note which reads as follows:

"Request the testimony given by Benjamin Rosado and Joseph Salvato at Sepret Tables between these parties and anyone else at Sepret Tables.

Also John Vasquez' testimony concerning events at Sepret Tables."

It is agreed that John Vasquez never testi-

1 fied that he was ever at Sepret Tables. But we will
2 now read to you the testimony regarding your first in-
3 quiry.
4

5 (Testimony read.)

6 THE COURT: That concludes the reading
7 of the testimony you have asked for. You may retire
8 to continue your deliberations.

9 (At 4:35 p.m. the jury retired to resume
10 its deliberations.)

11 (Discussion at the bench.)

12 THE COURT: I was thinking of sending
13 a note in to the jury and asking them if they think
14 there is any chance of their reaching a verdict by
15 6 o'clock. Otherwise we will have to make plans
16 for their having dinner. That doesn't tell them a
17 lot. It is just that we have to make plans for
18 dinner, which is true. We can't suddenly at 6 o'clock
19 say we are going to bring 12 people over for dinner.

20 MR. BORG: I think they should also be
21 told if they are going to remain after dinner until 8 or
22 9 or whatever time the court wishes to keep them.

23 THE COURT: I won't tell them anything
24 about that. All I want to do is tell them: If
25 you don't think you will reach a verdict by 6 o'clock

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we have to make arrangements now for taking you out
for dinner.

MR. BORG: That is Okay.

MR. STALONAS: I have no objection to
that.

MR. CAREY: No objection.

(Discussion off the record.)

(In open court.)

THE COURT: I will read the note to you:
"If you think you may not be able to reach
a verdict by 6 p.m. it will be necessary to make ar-
rangements for you to have dinner. Should such
arrangements be made?"

All right?

MR. CAREY: Yes.

MR. STALONAS: Yes.

MR. BORG: Fine.

(Pause.)

THE COURT: Yes, they want dinner.

(Court's Exhibit 7 was marked.)

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(The jury was taken to dinner at 6 o'clock P.M.
and returned to continue its deliberations at 7:35 P.M.)

(The jury took its place in the jury box at
9 P.M.)

THE COURT: Mr. Haskins, I understand that you
have reached a verdict as far as one of the defendants
is concerned.

THE FOREMAN: Yes.

THE COURT: Mr. Frezzo, will you please call
the roll?

(The roll of the jurors was called by the
clerk.)

THE CLERK: Have you agreed upon a verdict as
to Joseph Pecorino?

THE FOREMAN: Yes.

THE CLERK: How do you find as to the defendant
Pecorino on Count 1?

THE FOREMAN: Not guilty.

THE CLERK: How do you find as to the defendant
Pecorino on Count 2?

THE FOREMAN: Not guilty.

THE CLERK: And so say you all?

(Jury responded in the affirmative.)

THE COURT: Mr. Pecorino, you may leave the

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2 courtroom with your family.

3 (Defendant Pecorino leaves the courtroom.)

4 THE COURT: Mr. Haskins, I understand that you
5 have been unable to reach an agreement as to the other
6 two defendants. This case has been on trial now for
7 seven days, and I don't think that I can discharge you
8 after only devoting part of the day today to the
9 deliberations as to the other two defendants. Consequently,
10 I am going to ask you to continue your deliberations, and
11 if you cannot reach a verdict by 10 o'clock, I have
12 arranged to sequester you and bring you back tomorrow
13 morning to continue your deliberations.

14 You may retire.

15 (The jury retired to continue its deliberations
16 at 9:05 P.M.)

17 (Mr. Stalonas and Mr. Pecorino return to the
18 courtroom.)

19 THE COURT: Do you have an application to make?

20 MR. STALONAS: Yes, I move that the defendant
21 be discharged and bail be exonerated.

22 THE COURT: Application is granted.

23 (The jury was taken to a hotel at 10 P.M.
24 and an adjournment was taken to May 20, 1977, at 9:30 A.M.)

25

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

NOTICE OF APPEAL

LOUIS SANTOS,

Defendant.

*Ind # 77CR 135
Judge Metzger*

Name and Address of Appellant:

Louis Santos
Metropolitan Correctional Center

Name and Address of Appellant's Attorney:

Harold Borg
125-60 83rd Avenue
Kew Gardens, New York 11415

Offense: Conspiracy to Violate Section 241 Title XVIII United
States Code

Appellant appeals from the Judgment of Conviction rendered against him on the 13 day of May, 1977 wherein he was sentenced to imprisonment for a term of six years on July 11, 1977. Appellant is presently confined under this conviction.

The above-named Appellant hereby appeals to the United States Court of Appeals for the Second Circuit from the above-stated judgment and from each and every part and the whole thereof does this Appellant appeal.

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Dated: July 13, 1977

Yours, etc.

Harold Borg

HAROLD BORG

123-60 83rd Avenue

Kew Gardens, New York 11415

To: Honorable Robert Fiske
United States Attorney

AFFIDAVIT OF PERSONAL SERVICE

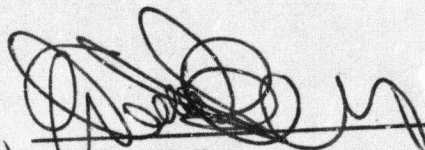
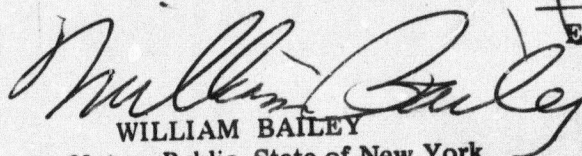
STATE OF NEW YORK
COUNTY OF RICHMOND ss.:

EDWARD BAILEY being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 21 day of September, 1977 at No. Saint Andrews Place

deponent served the within appendix
upon U.S. ATTORNEY

the attorney for appellee herein, by delivering a true copy(ies) thereof to him personally. Deponent knew the person so served to be the person mentioned and described in said papers as the attorney for appellee therein.

Sworn to before me this
21 day of September 1977.


Edward Bailey
WILLIAM BAILEY

Notary Public, State of New York

No. 43-0132945

Qualified in Richmond County

Commission Expires March 30, 1978